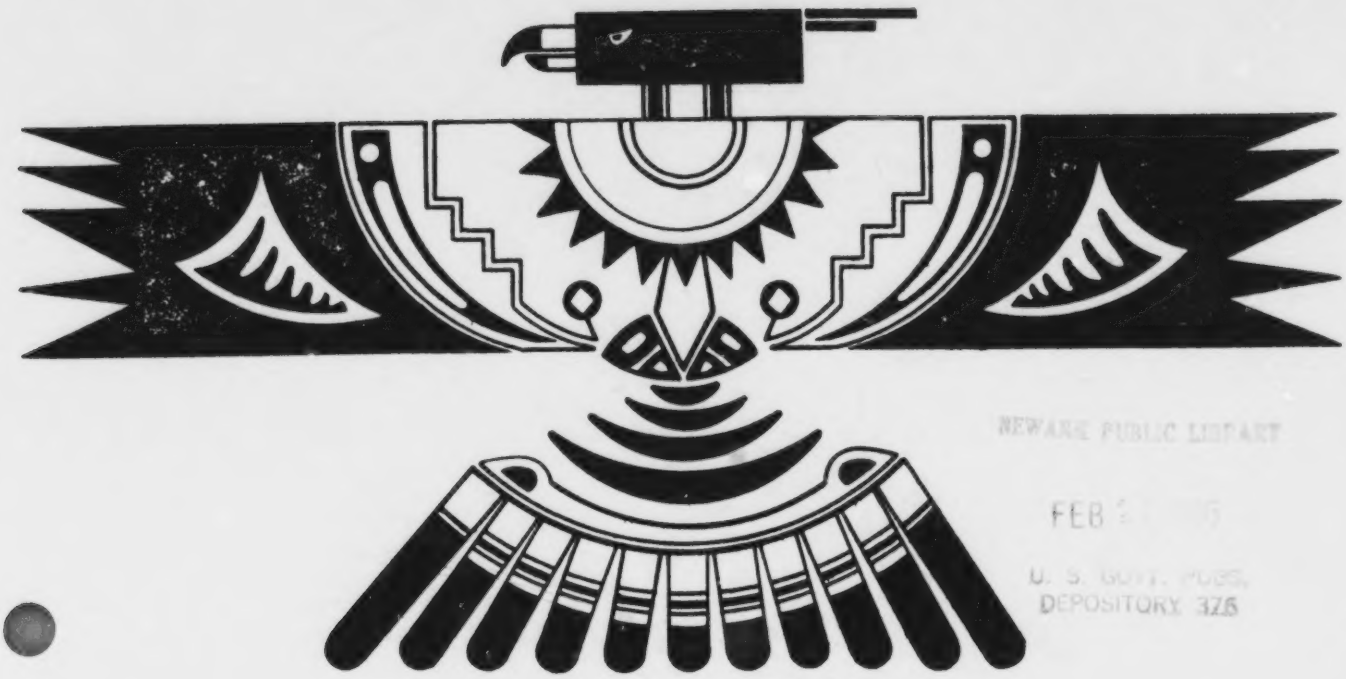
Su 7



NEWARK PUBLIC LIBRARY

FEB

U. S. GOVT. PUBS.
DEPOSITORY 325

Bureau of Indian Affairs

Branch of Real Property Management

Surface Leasing

I 20.2:

Surface Leasing

A Training Manual in Real Property Management

Prepared by

Bluewing Enterprises Limited
P.O. Box 1026
Pierre, South Dakota 57501

BIA Contract No. A00C14201388

for

U.S. Bureau of Indian Affairs
Aberdeen Area Office
Aberdeen, South Dakota
and
U.S. Bureau of Indian Affairs
Washington, D.C.

January, 1984

READEX FICHE best copy available

PREFACE

This training manual, Surface Leasing, is one of eight designed to be used in a new BIA Real Property Training Program. The purpose of this program is to standardize Real Property practices throughout the Bureau of Indian Affairs, and to upgrade the technical services provided by Bureau personnel by fully familiarizing them with these standard procedures. In order to accomplish this educational task, these manuals are presented in clear and precise language for in-house training at all levels of operation, from the local Agency to the Central Office.

Land has always been important to Indian culture and religion, and it has also been at the center of most disputes involving Indians. Federal Indian policy has usually been designed to allocate or adjust property rights, and the possession of special property rights distinguishs Indians from other American citizens. Accordingly, the administration of trust property has always been a key element of the Bureau's trust responsibility to tribes as well as individual tribal members.

Each year the problems involved in managing the approximately 52 million acres of real property that remains in trust become more complex. At the same time, the Bureau strives to meet the increased demand for more efficient administration. In order to help meet this dual challenge, I was directed to develop this Real Property Training Program. It is therefore my personal goal to substantially increase the technical skill level of all Real Property personnel. And that is also the fundamental purpose of this manual, which I hope you find useful and informative.

Finally, I would like to acknowledge the dedicated efforts of Sidney L. Mills, Director of the Office of Trust Responsibilities in Washington, and Fred Gillis, Real Property Management Officer in Aberdeen, in helping to develop and coordinate this training program.

Sincerely,

Jerry L. Jaeger
Area Director

FOREWORD

The Real Property Management Training Manuals are designed to be taught by several types of individuals, including BIA employees and external specialists. In this respect, the manuals are minimal and instructors are urged to go beyond them in teaching the course. Instructors are expected to read all five chapters thoroughly and supplement them with their own experience and any special technical knowledge or administrative procedures or regulations that apply to the jurisdiction(s) where the trainees work.

It is expected that each instructor will bring to the classroom some special experience(s) that expand on and clarify particular points in the manual. To present the trainees with the content of the manual, only, is a minimal approach to teaching the course. With this expectation in mind, instructors are encouraged to consider the manual as minimal and to draw from their own experience and knowledge.

The instructor may wish to make notes pertaining to additional reading material available at the local levels that can be included in the course. Instructors will be well advised to open each session with a brief review of the prior material. That is, when you are beginning Session Two, start the instruction with a review of Session One and so on.

The training manuals were developed with the understanding that instructional aids such as overlays, video tapes, etc. would, generally, be unavailable at the training sites. The approach written into the manuals was primarily reading, and a chalkboard. It is, therefore, essential that the trainees be provided with an opportunity to read the manual before lectures are given. If the textual material is not available to trainees, the instructor will have to spend a much larger amount of time in presenting the chapters.

This course on Surface Leasing is designed to create an awareness and understanding of surface leasing requirements that are an essential part of the work of Realty Specialists.

The Real Property Management Training Manuals have been developed with the intent of improving the performance of officials involved in the Realty program. If this basic goal is in some measure realized, then the administration of BIA's trust responsibility will have been improved considerably. To this end, the training manuals are dedicated.

TABLE OF CONTENTS

SUBJECT	PAGE
PREFACE	ii
FOREWORD	iii
SESSION ONE	1-1
Course Outline	1-1
Learning Objectives	1-1
BACKGROUND, AUTHORITY, AND FUNDAMENTALS OF LEASES	1-2
Leasing Background and Authority	1-2
History of Leasing	1-2
Indian Treaties	1-3
Acts of Congress	1-4
General Leasing Authorities	1-5
Parts of Leases and Terminology	1-6
Seven Essential Parts of a Lease	1-7
Lease Terminology	1-8
Range of Use	1-10
Reasons for Leasing	1-11
QUIZ - SESSION ONE	1-13
SESSION TWO	2-1
Course Outline	2-1
Learning Objectives	2-1
SURFACE LEASING REGULATIONS	2-2
Current and Proposed Regulations	2-3
Definitions	2-3
Grants of Leases	2-4
Use of Minor's Land	2-4
Special Requirements and Provisions	2-5
Negotiation of Leases	2-6
Advertisement	2-7
Duration of Leases	2-7
Ownership of Improvements	2-8
Unitization for Leasing	2-8
Conservation and Land Use Requirements	2-8
Sublease and Assignment	2-9
Payment of Fees and Drainage and Irrigation Charges	2-9
Violation of the Lease	2-10
Grazing Units Excepted	2-11
Regulations for Specific Reservations	2-11
Summary of Statutory and Regulatory Authorities	2-11
QUIZ - SESSION TWO	2-13
SESSION THREE	3-1
Course Outline	3-1
Learning Objectives	3-2
AGRICULTURAL LEASES	3-3
Leases of Developed Agricultural Land	3-3

SUBJECT	PAGE
Dry Farm and Farm Pasture Leases	3-6
Leases of Irrigated Land	3-6
Agricultural Development Leases	3-7
Term	3-8
Rental	3-9
Additional Development Lease Provisions	3-10
Agricultural Leasehold Improvements	3-10
Land Use Stipulations	3-11
Agricultural Leasing Procedures and Records	3-11
Leasing Action Plan	3-11
Leasing Checklist	3-12
Compliance and Follow-up Suspense Systems	3-12
Automated Systems	3-12
QUIZ - SESSION THREE	3-13
SESSION FOUR	4-1
Course Outline	4-1
Learning Objectives	4-1
BUSINESS LEASES	4-1
Short-term Business Leases	4-2
Development Leases	4-2
Commercial Development Leases	4-3
Residential Development Leases	4-3
Recreation Development Leases	4-7
Mixed Development Leases	4-10
QUIZ - SESSION FOUR	4-11
SESSION FIVE	4-12
Course Outline	5-1
Learning Objectives	5-1
DRAFTING DEVELOPMENT LEASES	5-2
Review of Development Lease Provisions	5-3
Completing an Agricultural Lease	5-3
QUIZ - SESSION FIVE	5-13
HANDOUTS	5-15
QUIZ ANSWERS	

SESSION ONE
BACKGROUND, AUTHORITY, AND FUNDAMENTALS OF LEASES

Course Outline - Session One

Background, Authority, and Fundamentals of Leases

A. Leasing Background and Authority

1. History of Leasing
2. Indian Treaties
3. Acts of Congress

B. Parts of Leases and Terminology

1. Seven Essential Parts of a Lease
2. Lease Terminology

C. Range of Use

1. Geographic and Climatic Variations
2. Types of Use

D. Reasons for Leasing

1. Landowner's Reasons
2. Tenant's Reasons

Learning Objectives. Participants should:

1. Know and understand the historical background of land leasing.
2. Know and understand the authority for leasing Indian lands.
3. Know and understand lease essentials and terminology.
4. Know and understand the broad variation in land uses which require comprehensive lease strategies.
5. Know and understand the reasons why people lease land.

BACKGROUND, AUTHORITY, AND FUNDAMENTALS OF LEASES

Leasing Background and Authority

Some form of land leasing has been practiced virtually from the beginnings of civilization. Although leasing Indian lands involves several unique features, the basic essentials have come down from the legal systems developed by the European colonizers of the North American continent, most notably the English. The authorities for Indian leases have evolved with the development of Federal Indian policy and the pressures generated by Indian and non-Indian interests. Leasing has become a major activity in the performance of Federal trust responsibilities by the Bureau of Indian Affairs.

History of Leasing. Evidence of land leasing exists in the earliest records of mankind. One author states that the cuneiform texts of Mesopotamia show that all lands were owned by a local God and the King was described as "the tenant farmer of the God." (Julian Jaynes, The Origin of Consciousness in the Breakdown of the Bicameral Mind, Houghton Mifflin, 1976, page 178).

Early Greek orators made references to perpetual leaseholds as early as 500 B.C. Those leases were made for arable lands as well as for silver and gold mines. The lease took the form of a percentage lease and had provisions for leasehold financing. A cash amount was paid at the beginning of the lease and a fixed annual rental of four percent of the profits was specified. The lease also allowed the lessee to sell the lease or borrow against it. (Stanley L. McMichael and Paul T. O'Keefe, Leases, Percentage, Short and Long Term, Prentice Hall, 1974, Chapter 1 pages 1-2).

In the Roman Empire, rulers controlled all of the land a parceled it out to a select group of nobelmen. Details of long-term leases were developed to allow these landholders to make a profit from their holdings. Stipulated conditions gave the perpetual right of possession to the grantee and his heirs for a fixed annual fee. He could not abandon the land nor free himself from the lease without the consent of the grantor. Other obligations imposed upon the grantee included the requirement that if he fell three years behind on his rent or taxes he had to yield possession. Also, he could not transfer, assign, or sublease the property without the consent of the grantor. If the grantee did sell the lease, he had to give the grantor the right to purchase the lease at the offered price. If the sale took place the grantor had the right to a two percent commission. (McMichael and O'Keefe, op cit., p. 2).

In early England, the King owned all of the land. As in Rome, the King granted the land to the lords who in turn rented or leases it to the serfs. It was in England where long-term leasing was refined through practice. The long-term leasing system of early England is still reflected in the holdings of English nobility today. In fact,

there are reports of successive long-term leases for 99 years which have been renewed in recent years. (McMichael and O'Keefe, op cit., p. 2-3).

Long-term leases were introduced in Baltimore and Philadelphia in about 1700 by English colonists which set many of the patterns of leasing in the rest of the United States. The use of long-term development leases such as we have in the United States today came into being in the late 1800's. The percentage lease as we know it was first used in about 1915, primarily as a device for leasing developed commercial property. Each state has its own peculiar laws governing leases, but the basic elements of leases prevail throughout the country. (McMichael and O'Keefe, op cit., p. 4-5).

Leasing of Indian lands has evolved from patterns that existed long before reservations were established and have been adapted to meet the needs of the people in relationship to the existing economy.

Indian Treaties. During the treaty-making period of American history, one of the primary objectives of the national government was to restrict Indian tribes to well-defined land areas thereby freeing land for settlement by European colonists. "The overriding goal of the United States during treaty making was to obtain Indian lands, particularly after such lands became encircled by non-Indian lands." (Felix S. Cohen's Handbook of Federal Indian Law, 1982 Edition, Michie, Bobbs-Merrill, p. 66).

Indian reservations were set aside for tribal entities and only rarely was individualized ownership contemplated or accomplished. The main exceptions were those instances where individual leaders were awarded specific land in "appreciation" for their execution of treaties on behalf of their tribes. Late in the treaty making era, the Government inserted provisions in many treaties empowering the President to grant allotments to individual Indians. "The most important intrusion upon tribal self-government having general effect during the treaty-making era occurred in those treaties negotiated after 1853 conferring upon the President's authority to allot tribal lands to individual Indians." (Felix S. Cohen's Handbook, op cit., p. 69). Typical was the language of the Treaty with the Confederated Tribes of Otoes and Missourias, March 15, 1854, 10 Stat. 1038: " . . . . and the President may, at any time in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened [sic] or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution embracing such land within its boundaries shall have been formed. . ."

It should be noted that Indian treaties did not contain affirmative leasing authority. In those instances when leasing was mentioned at all, the language was in the nature of restraint or limitation.

Acts of Congress. From the beginning, it was the policy of the Federal Government to reserve to itself the authority and power to obtain interests in Indian land, and in general to deal with Indian tribes. This policy is reflected by Article I, Section 8, Clause 3 of the United States Constitution which empowers Congress "To regulate commerce with foreign nations and among the several states, and with Indian tribes."

One of the initial exercises by Congress of its power to regulate the use and disposal of Indian lands was the first Indian Intercourse Act of July 22, 1790, which provided:

> "That no sale of lands made by Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of preemption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States."

The Act of May 19, 1796 (1 Stat. 472) contained a general prohibition against leasing tribal lands except pursuant to special statutes. It provided "That no purchase, grant, lease or other conveyance of lands . . . . shall be of any validity in law or equity, unless the same be made by treaty, or convention, entered into pursuant to the Constitution." This language was codified when Congress enacted the Revised Statutes by the Act of June 30, 1834 (4 Stat. 729) and is still embodied in the United States Code (25 U.S.C. 177).

There is substantial evidence that invalid leases were made by numerous tribes before and after 1871, which was the end of the Indian treaty-making period. Some of those involved land on the Seneca Reservations in the State of New York which Congress ratified by the Act of February 19, 1875 (18 Stat. 320). Subsequently, a number of special Congressional enactments enabled certain tribes to lease their lands.

General statutory authority for leasing Indian lands did not come into being until after the passage of The General Allotment Act of 1887. The basic purpose of that act was to break up Indian reservations by granting allotments to individual tribal members after which any remaining lands were to be ceded to the Government and made available for homesteading by non-Indian settlers. The United States had embarked on a policy of assimilating the Indian people by individualizing land ownership with the expectation that Indians would become farmers and herdsmen like the majority of the non-Indian population at the time. "The allotment program did not succeed in turning the Indian into a farmer, and much allotted land remained unfarmed. There are many reasons for this, including inefficiency of the Indian Agency system, inadequate appropriations for farm implements, lack of vocational training, unsuitability of the land for agriculture, physical incapacity of some allottees, and the spiritual opposition of some Indians to plowing Mother Earth. Public pressure mounted to utilize the 'wasted'

land. Western settlers were anxious to farm it; land companies were ready to lease it from the Indians and sublease to the settlers at a profit. Also, it was hoped that the income from leasing would reduce appropriations for Indians." (Felix S. Cohen's Handbook, op cit., p. 134).

It was in that climate that Congress, somewhat grudgingly, began enacting general leasing authority. Handout II-1, which is a copy of the current surface leasing manual, 54 IAM 5, contains a detailed list of the principal Acts of Congress which authorize surface leases. The following Table illustrates the evolution of general leasing authority.

General Leasing Authorities

Allotted Lands				Tribal Lands			
Date of Act	Term Auth.	Conditions Limitations	Purpose	Date of Act	Term Auth.	Conditions Limitations	Purpose
2-28 1891	3 yrs.	Age, disability prevents use.	Farming, Grazing	2-28 1891	5 yrs.	Lands bought & paid for not needed for allotment.	Grazing
5-31 1900	5 yrs.	Age, disability prevents use.	Farming				
6-25 1910	5 yrs.	Held under trust patent.	None specif.				
5-18 1916	10 yrs.	Arid, but irrigable. Age, disability prevents use.	None specif.				
3-3 1921	None speci.	Restricted allotment except 5 tribes	Farming, Grazing				
				7-3 1926	10 yrs.	Unalloted, irrigable	Farming
				6-18 1934	10 yrs.	Chartered, Tribal Corp.	None Specif.
2-11 1936	5 yrs.	5 Tribe members ½ blood or more.	Farming Grazing				

General Leasing Authorities

Allotted Lands				Tribal Lands			
Date of Act	Term Auth.	Conditions Limitations	Purpose	Date of Act	Term Auth.	Conditions Limitations	Purpose
7-8 1940	same as auth. prev.	By Supt. when allottee deceased, heirs unde-termined, or they cannot agree on lease.	Same as auth. previously.				
8-9 1955	25+ 25 yrs.		Business	8-9 1955	25+ 25 yrs.		Business etc.
	25 yrs		Agric. spec. crops		25 yrs.		Agric. spec. crops
	10 yrs		Grazing		10 yrs		Grazing
9-21 1959 & sub.	99 yrs	On specific reservations	Business etc.	9-21	99 yrs.	On specific reservations	Business etc.

In addition to the preceding table, Congress has, over the years, enacted numerous special laws granting leasing authority to resolve particular land tenure problems or to provide exceptional leasing authority for individual reservations. Real Estate Services specialists will find it necessary to become thoroughly familiar with all such special leasing statutes applicable to the reservations served by their agencies.

Parts of Leases and Terminology

A lease is a contract which conveys the exclusive rights to use real estate for a definite period of time. Since leases are both contracts and conveyances, their legal status is complicated by the fact that both contract and property law apply. Thompson On Real Property states that a lease " . . . . is a qualified alienation of real estate, and for all intents and purposes, subject to its terms, the lesses becomes the owner thereof." The property owner, in agreeing to convey the use right is entitled to rent and the other benefits detailed in the provisions of the lease. Generally, the property owner who grants the

lease is referred to as the "lessor" and the person who obtains the lease is called the "lessee."

Seven Essential Parts of a Lease. Most authorities recognize the following seven elements as essential to the validity of a lease:

1. The Names of the Parties. This includes the name of the person or other entity owning the land and the name of the person or other entity that is being granted the right to use the land. Both parties to a lease must have the legal ability to contract, which excludes minors, incompetents, persons who have lost their civil rights (such as convicts), and undomesticated foreign corporations.

2. The Demise of Letting. This is the legal phraseology necessary to describe the action taken. In most leases the following words are used: "The Lessor hereby lets and leases to the Lessee."

3. The Recital. This is the legal description of the property covered by the lease. Real estate can be described in any one of several ways; e.g.- by reciting the aliquot parts of the section, range, and township; by metes and bounds; by reference to a plat or map; by giving the street address in the case of urban property; or even by giving the room number in the case of space within a building. The important thing is that the description be specific and accurate enough that no doubt will exist about the property being leased.

4. The Habendum and Tenendum. These Latin words mean "to have" and "to hold" and refer to the part of the lease that spells out the term and duration. This clause should give the commencement date, the length of the term, and the ending date. A lessor cannot lease land for a term longer than the duration of his own estate in the land. Thus, a life tenant can grant a lease only for the remainder of his life, which is an uncertain period, generally unacceptable to a potential lessee. Likewise, a lessee can only grant a sublease for the remaining term of his lease. Indian landowners can grant leases only for the terms authorized by law.

5. The Reddendum. This is another Latin term which means "rendering" and it refers to the part of the lease that specifies the amount of rent to be paid to the lessor and the times and method of payment. This clause should include the amount of base rent, the frequency of payment, escalation or adjustment language, percentage computation provisions, to whom the rent is to be paid, and the place at which it will be made. Under existing economic conditions, when both recessionary and inflationary influences are possible, it is particularly important to consider including rental adjustment provisions in leases, even those with relatively short terms.

6. Conditions, Covenants, and Warranties. This part will consist of a series of provisions that cover such things as maintenance and improvement of the premises; limitations on use; payment of utility

charges, taxes and insurance costs; default actions; bonding requirements; rights to possession and quiet enjoyment; rights of ingress and egress; rights to assign and sublease; rights of the parties in case part of the property is taken under the power of eminent domain or suffers casualty loss; and, in the case of Indian leases, the mandatory clauses required by statute or regulation.

7. Signatures, Acknowledgements, and the Date of the Agreement. The lease must be executed by the owner of the leased premises and by the lessee or by someone legally empowered to contract on their behalf. Execution by someone acting on behalf of a party must be supported by adequate evidence of their authority such as a copy of a power of attorney, a copy of a court order, etc. Corporate officials should furnish copies of corporate documents including a Board of Directors Resolution authorizing them to act.

Even if the state in which the leased premises are located does not require that leases be acknowledged, it is considered good practice to do so.

If the opening paragraphs of the lease recite a date on which it is entered into, the date preceding the signatures should be the same date, or better yet, it should refer back to the date first recited.

For purpose of Indian leasing, we should add an eighth element essential to the validity of a lease. With very few exceptions, such as Crow Competent Leases, no lease of Indian trust or restricted land is valid until it has been approved by the Secretary of the Interior or a duly authorized representative acting under delegated authority.

Lease Terminology. An understanding of the following lease terminology will greatly assist Real Property Management personnel in performing surface leasing functions.

Lease Assignments. This refers to a transfer or conveyance of a valid existing lease to a third party, who becomes the new lessee. Generally, an assignment must cover the entire leasehold interest. Some leases do provide for the creation of several leases in place of the original lease (so-called spin-off leases), each of which may then be assigned.

Lease or Lease Contract. This is the complete agreement between the parties as it exists at any given time. It is the original lease as it has been modified to date.

Leased Fee. This is the estate retained by the lessor. It consists of the right to rentals, the right to have property revert at the end of the lease term, and the right to any other benefits specifically reserved to the lease.

The value of the leased fee is determined by calculating the present value of the right to receive the rent for the term of the lease, plus the present value of the reversion, plus the present value of any other lease benefits. Handout I-1 demonstrates how the value of the Leased Fee may be calculated.

Leasehold Encumbrance. This term refers to a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

Leasehold Interest. This is the name given to the interest conveyed by the lessor to the lessee under the lease, in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

The value of the leasehold interest can be determined by capitalizing the difference between the rent required to be paid under the lease (the contract rent) and the actual present fair annual rental value of the property (the market rent) for the remaining term of the lease. Handout I-2 demonstrates how the value of the Leasehold Interest may be calculated.

Lessee. The lessee is the grantee of the lease; the owner of the leasehold interest. Some leases may refer to this entity as the tenant, party of the second part, or by some other designation.

Lessor. The lessor is the grantor of the lease; the landowner who granted the lease. Some leases may refer to him as the landlord, party of the first part, grantor, tribe, or by some other designation.

Master Lease. This term refers to the lease or lease contract. It is used in cases where one or more subleases have been made covering portions of the premises included in the lease.

Modification. This is an agreement made during the term of the lease changing some provision or provisions of the original lease. It may also sometimes be called an "Amendment" or a "Supplemental Agreement."

Net Lease. This is a lease in which the lessor receives a specified rental over and above any expenses that normally would or might accrue to the landowner, such as, taxes, insurance premiums, irrigation operation and maintenance charges, utility costs, improvement assessments, maintenance costs, etc.

Sublease. A sublease is an agreement granting a leasehold interest in the lessee's leasehold to a third party, known as a sublessee. The lessee becomes the sublessor under a sublease. The lessee-sublessor retains all of his obligations under the master lease. Obviously, a lessee can grant no more to a third party under a sublease than he has

at the time under the master lease. Generally, if a lease fails (is terminated) all subleases fail also.

Termination. This refers to the date when the lease ends or terminates. A lease can terminate by "expiration"; that is, the specified term runs out. It can terminate by "cancellation"; that is, the lease is abrogated or ended involuntarily before it expiration date, because of a breach of terms thereof, or a lease can terminate by "surrender"; that is, the lease is ended by the mutual agreement of the parties. Sometimes a lease will give the lessee the unilateral right to surrender under certain circumstances.

Range of Use

There are over fifty million acres of trust or restricted Indian land located in about three-fifths of the states. Some of that land is highly developed, producing significant income for the owners. Much of it is undeveloped or underdeveloped, producing only a fraction of its potential, if at all. Real Estate Services personnel are constantly faced with the opportunity and challenge to assist the Indian owerns in striving to narrow this gap between potential and actual income. Geography, climate, and highest and best use factors greatly influence lease demand.

Geography and Climatic Variations. Almost every climatic and geographic condition existing in the United States also exists on some portion of the vast Indian estate. From the arctic areas of Alaska to the arid deserts of Southern California, Arizona, and New Mexico, and from the semi-tropical everglades of Florida to the fertile plains of the Dakotas, Nebraska, Kansas, and Oklahoma, the diversity of Indian land is evident. Growing seasons range from less than 80 days to over 240, and annual precipitation varies from 60 inches or more to 10 inches or less. The spread in elevation runs from below sea-level to over 10,000 feet.

Although most Indian land is located in rural areas, substantial acreages are in urban and suburban settings. Some reservations encompass large conifer forests and others are blessed with lake, river, and ocean frontages. To be sure, there are reservations whose natural resources are meager, but other are abundantly endowed with game, fish, timber, water, minerals, rich farmlands, and advantageous locations. It is within the context of these conditions that land use and development opportunities exist.

Types of Use. Actual and potential uses of Indian land include virtually all those existing in America today.

Agricultural lands include those watered by flood, sprinkler, or drip irrigation systems and so-called dry farm lands which rely on natural precipitation. Highly developed farm and pasture lands may be leased for short terms of five years or less. Undeveloped or

underdeveloped lands may be placed under long-term development leases of up to 25 years. In some instances, agricultural development leases have been made for as long as 40 years to permit creation of fruit and nut orchards.

Much Indian land is suitable for residential development, both for the Indian people themselves, and for others. Those can include individual homesites, large single family residential subdivisions, apartment complexes, condominiums, recreational and seasonal homesites, and hotel developments. Commercial potential ranges from single store or filling station sites to large shopping center complexes and office buildings. Recreational potential includes golf courses, marinas, theaters, horse, dog, and auto racing tracks, tennis clubs, and even bingo and jai-alai facilities. Industrial leases may involve land in developed parks or cover individual sites for virtually every conceivable type of industrial facility, many directly tied to reservation resources, such as, power plants, cotton gins, food processing and canning facilities, saw mills, and other forest industries. Public uses can include post offices, government offices, hospitals, schools, landfills, and others.

Many lease opportunities will involve a combination of uses, such as, recreation, single family and multiple residential, hotel, and commercial facilities of several types. In addition, once a major residential, commercial, recreational, or industrial development is realized, it almost inevitably generates opportunities for additional developments for allied or complementary purposes.

These broad variations in land use opportunities require the Real Estate Services personnel understand and be able to apply a wide range of leasing techniques and strategies to master the challenges they will face.

Reasons for Leasing

Obviously, both landowners and potential tenants have compelling reasons for desiring to enter into lease agreements or no lease would ever be consummated. We have already alluded to some of those reasons, which differ depending on which party's motives are being examined.

Landowner's Reasons. Landowners lease their land because they want to produce income while retaining ownership and ultimate control over it, but are unable or unwilling to use it themselves. Some landowners are physically unable to use their own land because of age, infirmity, physical location, or otherwise. Some do not choose to follow the pursuits or may not have the skills necessary to use their own land. Not everyone wants, or is qualified, to be a farmer, rancher, etc. In other cases, substantial capital investment and development expertise are necessary to make land fully productive, and the landowner is unable to obtain either, or is unwilling to assume the risks involved. A properly negotiated lease enables a landowner to have his land developed

and returned to him at the end of the term, at which time he can enjoy the benefits of greatly enhanced resources.

Many situations exist where a landowner's parcel is not an economic unit and must be combined with other parcels to form a usable tract. The land lease is one method of accomplishing such utilization.

Leases are also used to produce income from interim uses while waiting for economic forces to justify a higher and better use of the land.

Tenants Reasons. Many people do not have the money and cannot obtain the financing necessary to purchase real estate. In order to obtain the use of land and its improvements, they must obtain a lease. Other people may be able to finance a land purchase, but do not choose to convert their liquid assets to a relatively non-liquid resource such as land. Nevertheless, they still want or need to use real estate for a period of time.

Potential lessees may desire to obtain the use of land, but are unable to purchase it because of the unwillingness or legal inability of the owner to sell. In such situations, a lease is the only method available to them to obtain use rights.

Developers are often motivated to lease land, especially where land costs are proportionately high compared to development costs, in order to conserve cash for development expenses and working capital.

Lessees, if they obtain a sufficiently long-term lease, can benefit from most of the advantages of land ownership while avoiding some of the problems. They can usually assign or sublease their interests and thus realize capital gains, income flow, etc.

Quiz -- Session One
Background, Authorities and Fundamentals

A. True - False

T F 1. Leasing of lands is a relatively recent historical event, dating back no further than the early days of English civilization.

T F 2. Provisions for leasing of Indian lands as contained in treaties were affirmative and encouraged, rather than discouraged such activities.

T F 3. One of the anticipated outcomes of leasing of Indian lands was that Congressional subsidies for Indians would be decreased.

T F 4. A lease is a contract which conveys exclusive rights to use real estate for an indefinite period of time.

T F 5. Developers are interested in leasing lands because lower front end costs associated with leasing (as opposed to purchasing) conserve cash for development expenses and working capital.

B. Completion.

1. The legal description of the property covered by the lease is known as the _____ and can be described in a number of ways such as _____, _____, and township; metes and _____; and by reference to a _____ _____ (if the property is urban).

2. The _____ and _____ are parts of the lease that spell out its term and duration and should specify the _____ date, the length of the _____, and the _____ date.

3. The mandatory clauses required by statute and regulation in Indian leases are contained in that part of the lease known as _____, _____, and warranties.

4. Transfer or conveyance of a valid, existing lease to a third party who becomes the new lessee is called an _____.

5. An agreement changing a provision(s) of the lease which is made during the term of the lease is known as a _____, an _____, or a _____ agreement.

6. The interest conveyed by the lessor to the lessee under the lease, primarily that of quiet enjoyment, is known as the _____ _____.

Quiz - Session One (cont'd)

B. Completion (cont'd)

7. An agreement granting a leasehold interest in the lessee's leasehold to a third party is called a _____.

8. To be valid, a lease of Indian lands must, almost without exception, be approved by the _____ or his duly _____ acting under delegated authority.

9. The Federal Government's authority to deal with Indian tribes to obtain interests in their land is found in Article I, Section 8, Clause 3, popularly known as the "_____."

10. Rental adjustment clauses, which may be considered as a protective measure of Indian landowner interests, should be considered for all leases, even those with _____ terms. When they appear in a lease, they are found in the _____ part of the lease.

C. Matching (Some answers may be used more than once; others not at all)

1. _____ Act which provides 99 year leasing authority for certain tribes.

2. _____ Act which permits Superintendent to award leases when heirs cannot agree on a lease.

3. _____ Act which permits leasing of individually-owned and tribal lands for 25 years for growing of specialized crops.

4. _____ Act which initially provided for 3 year leases of Indian lands for farming and grazing.

5. _____ Act which provides for 25 year lease term for business leases and for one renewal term of a like number of years.

6. _____ Act which provides for leasing of individually-owned land when heirs have not been determined.

A. July 3, 1926

B. May 31, 1900

C. July 8, 1940

D. General Allotment Act of 1887

E. May 18, 1916

F. Feb. 11, 1936

G. Sept. 21, 1959

H. August 9, 1955

I. Feb. 28, 1891

Quiz - Session One (cont'd)

C. Matching (cont'd)

7.	_____	Act which permits 10 year leases of arid, but irrigable, individually-owned lands.	A. July 3, 1926
8.	_____	Act which provides for 10 year lease term of unallotted, irrigable lands.	B. May 31, 1900
9.	_____	Act which sought to break up reservations by granting allotments to tribal members.	C. July 8, 1940
			D. General Allotment Act of 1887
			E. May 18, 1916
			F. Feb. 11, 1936
			G. Sept. 21, 1959
			H. August 9, 1955
			I. Feb. 28, 1891

Session Two

Surface Leasing Regulations

Outline - Session Two

Surface Leasing Regulations

A. Current and Proposed Regulations

1. Definitions
2. Grants of Leases
3. Use of Minor's Land
4. Special Requirements and Provisions
5. Negotiation of Leases
6. Advertisement
7. Duration of Leases
8. Ownership of Improvements
9. Unitizations for Leasing
10. Conservation and Land Use Requirements
11. Sublease and Assignment
12. Payment of Fees and Drainage and Irrigation Charges
13. Violation of Lease
14. Grazing Units Excepted
15. Regulations for Specific Reservations

B. Summary of Statutory and Regulatory Authorities for Granting Surface Leases

Learning Objectives. Participants should:

1. Know and understand the definitions of terms used in the surface leasing regulations.

2. Know and understand the rules and regulations used in surface leasing.

3. Know and understand the proposed changes in the surface leasing regulations.

SURFACE LEASING REGULATIONS

Congress provides broad authority, policy, and guidelines for Federal activities by the enactment of statutory law. Administrative agencies implement such statutes by promulgating regulations which amplify, clarify, and interpret the statutes. Regulations are a form of administrative law which is secondary to, but just as enforceable, as statutory law. "The rules and regulations of the Indian Department promulgated under the authority of law, have the force and effect of statutes, of which the Court will take judicial notice." Bridgeman v. U.S., Mont. 1905, 140 F. 577, 583, 72 C.C.A. 145. It is important to remember that leasing regulations are binding on lessees of Indian land, Indian landowners, and on officials and employees of the Interior Department. The power to waive or grant exceptions to a regulations is reserved to the Secretary, the Deputy Secretary, the Assistant Secretary for Indian Affairs, and the Deputy Assistant Secretary for Indian Affairs (Operations), who has replaced the Commissioner of Indian Affairs as the official in charge of the Bureau of Indian Affairs. Real Estates Services specialists working in the surface leasing program must be thoroughly familiar with the regulations governing that activity.

The last general revision of the surface leasing regulations was made in 1961, at which time they constituted part 131, Title 25, Code of Federal Regulations. In 1982, as a part of a general rearrangement of Title 25, Part 131 was redesignated as Part 162 (47 F.R. 13327). Part 162 contains all current regulations governing the administration of the surface leasing program.

Proposed amendments to the surface leasing regulations have been under consideration for some years. A notice of proposed rule making was published on October 27, 1978 (43 F.R. 50210). Due to the lapse of time since that publication, it is anticipated that a new notice will be published. Unless and until revised regulations are published in final form, they are of no force and effect. Nevertheless, in the discussion of the surface leasing regulations that follows, significant changes under consideration will be mentioned and identified by enclosure in brackets.

All leases of trust or restricted Indian land must either be approved or granted by the Secretary of the Interior or by an official acting for him pursuant to the delegated authority. The few exceptions, such as Crow Competent leases which were mentioned in Session One, apply to very specific and limited situations. The purpose of requiring approval is to insure that the leases conform to applicable laws and are in the best interest of Indian owners.

From the earliest leasing statutes, Congress provided that Indian landowners, be they individuals or tribes acting through their leaders, could grant leases on their land subject to Secretarial approval. This is unique in the area of trust management. Ordinarily the trustee has

the complete authority to manage the trust assets and the beneficiary does not have an active role.

Because of the particular trust arrangement devised for Indian land and the system of probate within the Interior Department which resulted in badly fractionated ownerships, Congress found it necessary to pass the Act of July 8, 1940 (25 U.S.C. 380). That act gives Agency Superintendents the authority to grant leases on behalf of undetermined heirs and on behalf of heirs or devisees who have been unable during a three month period to agree on a lease for any one of several reasons. Further details of that authority are contained in the discussion that follows.

Current and Proposed Regulations.

The following review of current surface leasing regulations is supplemented by comments on significant proposed changes in the regulations which are identified by being enclosed in brackets. Handout II-A is a copy of 25 CFR 162, the present regulations. Handout II-B is a copy of the existing Surface Leasing Manual, 54 IAM 5, which was published in 1962, a few months after the publication of the regulations now in force. A new Surface Leasing Manual has been drafted and will be published after revised regulations become effective.

This review includes only those regulations of general application. Regulations that relate to specific reservations will only be mentioned, but they should be thoroughly reviewed by those personnel whose responsibilities include the various reservations involved.

Definitions. Definitions applicable to the Surface Leasing Regulations are found in 25 CFR 162.1.

Secretary means the Secretary of the Interior and those officials who have ben delegated or redelegated the authority to act for the Secretary. The delegation of authority from the Secretary to the Assistant Secretary - Indian Affairs is in 209 Departmental Manual 8.1, and the delegation to the Deputy Assistant Secretary - Indian Affairs (Operations) is in 209 DM 8.3. The redelegation of authority to Area Directors is in 10 IAM 3, and the Area office redelegations to Superintendents are addendums to 10 IAM 3. In most cases, when consulting the regulations we can substitute "Superintendent" where we find "Secretary" used.

Individually-owned land means both trust and restricted land beneficially owned by Indian individuals. It includes original allotments, interests in allotments inherited by individual Indians, and interests acquired by individuals in trust or restricted status by purchase or gift. It does not include lands owned by an individual Indian in fee simple or interests owned by a tribe, including interests in allotment.

Tribal land means all land owned by a Federally-recognized Indian tribe or group, including land acquired in a fee simple status, unless Congress has enacted a law which makes such land unrestricted. It includes tribal land reserved for BIA purposes when not presetly needed for those purposes, and land assigned to individual members.

Government land means land under the jurisdiction of th BIA, title to which is vested in the United States, which is neither tribal land nor individually-owned land.

Permit refers to a revocable privilege to use land. It does not convey any interest in land and is usually used to validate a short-term use of Government land.

Grants of Leases. Leases may be granted by both the Secretary (Sec. 162.2) and by landowners or their representatives (Sec. 162.3).

The Secretary may grant leases on behalf of (1) incompetent individual Indians, (2) orphaned minors who do not have a legal guardian or a person who serves in place of a parent, (3) the undetermined heirs of a deceased person's estate, (4) heirs and devisees of land in fractionated ownership who have been unable for a three month period to agree on a lease (when the land is not being used by any of the owners), (5) individual owners who have given the Secretary a power of attorney to grant leases for them, and (6) adult owners whose whereabouts are unknown.

The Secretary may grant only a permit on Government land.

The following individuals and entities may grant leases: (1) adults, except those who are incompetent, on their own land, on the land of their minor children, and on behalf of other minors for whom they serve as parents (except when the other minor has a legal guardian); (2) a duly appointed guardian, conservator, or other fiduciary on behalf of a person under legal disability; and (3) tribes and Federally chartered tribal corporations acting through their appropriate officials.

[The proposed regulations would preclude the negotiation or granting of leases by court appointed guardians, conservators, or other fiduciaries unless the Secretary first grants written approval for them to do so.]

[The proposed regulations would provide that the regulations in Part 162 can be superceded by Tribal Constitutions; By-laws or Charters issued under the Indian Reorganization Act, the Oklahoma Indian Welfare Act, or the Alaskan Act of May 1, 1936; or by ordinances, resolutions, or other actions authorized by such organic documents.]

Use of Minor's Land. The parent, legal guardian, or person serving as the parent of a minor landowner and having responsibility for care

and custody of the minor, may use the land of the minor without charge if it will enable him to engage in a business or enterprise which will also benefit the minor. (Sec. 162.4)

Special Requirements and Provisions. The following special requirements and provisions are specified in Sec. 162.5:

All leases must be in the form approved by the Secretary. This does not mean that a lease can only be made on an approved lease form. Superintendents have the authority to specify the form a lease will take, provided it complies with the pertinent law and regulations. All leases not granted by the Secretary must be approved by him in writing to be valid. (Sec. 162.5(a))

The general rule is that all leases must provide for the payment of the present fair annual rental. There are some exceptions to that rule:

(1) An adult Indian owner may lease his land for certain religious or public purposes or to member of his immediate family for less than fair annual rental; (Sec. 162.5(b)(1))

[The proposed regulations would allow these leases to be made with or without rental considerations, and would enlarge the class to whom they could be granted to include co-owners and others who have a special relationship to the owner justifying the reduction or elimination of rent.]

(2) Tribes may lease their land at a nominal rent for public or religious purposes, for purposes of subsidizing a tribal enterprise, or for certain Indian homesite purposes; (Sec. 162.5(b)(2)) and,

(3) The Secretary can grant or approve a lease for less than the current fair annual rental if he decides it would be in the best interests of the owners to do so. (Sec. 162.5(b)(3))

The general rule is that leases will require surety bonds for one year's rent (unless rent is paid annually in advance), for the cost of improvements to be placed on the leased land, and for other lease obligations; however, the Secretary has discretion in fixing the amount of the bond, the type of bond, or whether a bond will be required at all. (Sec. 162.5(c))

The Secretary has the discretion to require that particular leases obligate the lessee to obtain insurance covering improvements and public liability, as well as any other insurance considered necessary to protect the lessor. (Sec. 162.5(d))

[The proposed regulations would make the insurance requirements mandatory.]

No lease can provide preference rights to future leases, renewal options (except as expressly provided under the regulations), be entered into more than a year before its beginning date, or provide for payment or rental before the start of the period for which it is being paid (except when otherwise approved by the Secretary). All leases must specify the dates when rents become due and payable. (Sec. 162.5(e))

[The proposed regulations would change the restriction on payment before the start of the period to payment more than 60 days before the start of the period.]

All leases must state whether rents are to be paid direct to the lessor or to the Superintendent. (Sec. 162.5(f))

The following clauses are mandatory and must be included in all leases (Sec. 162.5(g)):

(1) All obligations under the lease run to the United States as well as to the lessor;

(2) Nothing in the lease shall serve to delay or prevent a termination of trust responsibilities to the owner of the land; however, termination will not abrogate the lease.

[The proposed regulations would add language providing that in the event of termination all powers, duties, or functions of the Secretary under the lease would end and the lessor would become responsible for enforcing lease compliance.]

(3) The lessee will not use or allow the leased property to be used for illegal purposes.

Leases on individually-owned land which provide for direct rental payments must also provide that in case the owner dies, all future rent will be paid to the Superintendent, and also that the Secretary has the discretion to suspend direct rental payments at any time whereupon future rental payments will be made to the Superintendent. (Sec. 162.5(h))

Negotiation of Leases. Leases may be negotiated by those owners or their representatives who are authorized to grant leases under Sec. 162.3. The Secretary can join in granting a lease with the owners of the majority interests in a tract who are authorized to grant leases and who have negotiated an acceptable lease, thereby committing the interests of incompetents, orphaned minors, undetermined heirs, and those who give him the power of attorney. The Secretary can also negotiate any lease he is authorized to grant if he decides that the lease provides for the payment of fair annual rental. (Sec. 162.6)

[The proposed regulations would authorize the Secretary to join in granting a lease on one or more tracts of tribal and individually-owned

land, where the majority interest holders have negotiated an acceptable lease, thereby committing the interests, of incompetents, orphaned minors, etc.]

Advertisement. The general rule is that the Secretary will advertise before he exercises his authority to grant a lease, but note the exceptions to that rule mentioned above. Advertisements for lease will call for sealed bids and will not offer or reserve preference rights for anyone. (Sec. 162.7))

Duration of Leases. The maximum term for which a lease may be granted is fixed by law depending on the purpose, location, and other specified factors. This regulation requires that leases be limited to the minimum period, commensurate with the purpose of the lease, that will allow the owner to obtain the highest economic return consistent with prudent management and conservation practices.

All leases except those granted for less than the fair annual rental under Sec. 162.5(b)(1) and (2), shall provide that the annual rental shall be subject to periodic review at not less than five year intervals, unless the rental consideration specified in the lease is based on percentages of income produced by the land. The review of equities must consider economic conditions exclusive of lessee developments or improvements required by the lease. The Secretary may unilaterally adjust rentals based on the review if he granted the lease, otherwise the adjustment must have the written concurrence of the Indian owners. (Sec. 162.8)

[The proposed regulations would only require adjustment provisions in leases with terms longer than ten years. They would also specify that adjustments can be designed to maintain the purchasing power of the rental income (cost of living adjustments), or to reflect increases in the value of the leased premises (reappraisals).]

Leases for public, religious, educational, recreational, residential, or business purposes can be made for a term up to 25 years, and may include provisions for one renewal term not to exceed 25 years. Leases on specified reservations can be made for the same purpose for terms up to 99 years. They may also contain one renewal option, but the original term plus the renewal term cannot exceed 99 years. (Sec. 162.8(a))

Farming leases which require a substantial investment in the land for the production of specialized crops may be made for a term up to 25 years. The nature of the crop and the necessity and amount of the investment are evaluated to determine the permissable term. Theoretically, farming leases of this type on reservations with 99 year leasing authority can be made for up to 99 years, but the longest farming lease granted on such reservations has been for 40 years, and, in any event, a term beyond 25 years requires a waiver or exception to the regulations. (Sec. 162.8(b))

All other dry-farm leases shall not exceed a term of 5 years and irrigable farm leases shall not exceed a term of 10 years. (Sec. 162.8(c))

[The proposed regulations would limit the term of all dry-farm and irrigable farm leases to 5 years.]

Grazing leases which require substantial development or improvement of the land can be granted for a term not to exceed 10 years. The term of other grazing leases cannot exceed 5 years. (Sec. 162.8(c) and (d))

The term of leases granted by the Secretary for an owner whose whereabouts is unknown shall be limited to 2 years unless the owner has a fractional interest in a tract and the owners of the majority interests have negotiated a satisfactory lease. In that event, the Secretary can join with the majority and commit the interests of the owner for a longer term. (Sec. 162.8(e))

Ownership of Improvements. Improvements place on the leased land become the property of the landowner unless otherwise specified in the lease. If improvements are reserved by the lessee, the lease must specify a maximum period of time allowed for their removal. (Sec. 162.9)

[The proposed regulations would require restoration of the premises by a lessee who removes improvements under a reserved right.]

Unitization for Leasing. A lease may be granted and approved covering two or more separate tracts in different ownerships, including both individual and tribal ownerships, if this is advantageous to the owners and to the operation of the land, assuming that the lease otherwise complies with the applicable law and regulations. (Sec. 162.10)

[The proposed regulations include provisions allowing multiple owners to designate a management group to represent all of the owners in making determinations, consents, and approvals, including consents to modifications or amendments of the lease; however, the management group would not be allowed to change the rental provisions, including division of the rentals among the owners, the term or surrender provisions.]

Conservation and Land Use Requirements. Land use stipulations and conservation plans necessary to define and require conformity to recognized principles of good practice and prudent management must be incorporated in all farming and grazing leases. (Sec. 162.11)

[The proposed regulations would change the title of this section to "Environmental considerations" and, in addition to the existing requirements, would require the Secretary, prior to approval or extension of a lease to satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and

the use of neighboring lands; the height, quality, and safety of structures or facilities to be constructed; the availability of police and fire protection, other public services, and judicial forums for civil and criminal causes of action arising on the premises; and the effect on the environment of uses to be made of the premises. It would also specifically call for compliance with the National Environmental Policy Act and the National Historic Preservation Act.]

Sublease and Assignment. As a general rule, a sublease, assignment, amendment, or encumbrance of a lease may be made only with the approval of the Secretary and the written consent of all lessors, lessees, and sureties. (Sec. 162.12(a))

The Secretary may approve a lease which allows the lessee to sublease without approval; however, such a lease cannot relieve the lessee from any of his obligations under the master lease or diminish any authority of the Secretary. (Sec. 162.12(b))

[The proposed regulations would also allow a lease to contain language for the assignment and encumbrance of subleaseholds without approval.]

The Secretary can approve a lease which contains language allowing the lessee to encumber his leasehold estate for the purpose of borrowing money to be used to develop and improve the leased premises. The encumbrance instrument must also be approved by the Secretary. If the lender obtains the leasehold through a foreclosure, he can be allowed to assign it without approval. Any assignee or purchaser or the leasehold, other than the lender, must agree to step into the shoes of the original lessee. (Sec. 162.12(c))

[The proposed regulations would remove the limitation on the purpose for which the leasehold could be encumbered.]

Leases of tribal land to tribal members or tribal housing authorities for Indian housing purposes may contain extra-ordinary provisions for assignment by a lender or by the lessee, if a Federal agency is involved in financing the housing project. Sec. 162.12(d)

Payment of Fees and Drainage and Irrigation Charges. Leases covering lands within an irrigation project or drainage district must require the lessee to pay all operation and maintenance charges assessed against the leased land when due, in addition to all rentals. (Sec. 162.13(a))

Fees are to be charged to the lessee to reimburse the Government for its costs in preparing and processing leases, subleases, assignments, transfers, renewals, extensions, modifications, or any other instrument issued in connection with surface leasing functions. These fees can be reduced or waived by the Secretary. The fees are based on graduated percentages or the annual rental payable under the

lease. The maximum fee is $250 and the minimum fee is $2. If the rent is based on percentages of income or on a share of the crops, the total annual rental may be estimated by agreement of the parties for the purpose of setting the fee.

If the tribe pays all or part of the expenses of the work, it is entitled to be reimbursed from the fees collected, or it can prescribe an additional or alternate fee schedule with Secretarial approval. (Sec. 162.13(b))

Violation of the Lease. The Secretary is responsible for enforcing compliance by lessees with lease provisions and regulations. Enforcement actions must be taken in strict accord with the provisions of the regulation.

When the Secretary becomes aware of a violation, he must serve a written notice on the lessee and the lessee's sureties setting forth in detail the nature of the violation and giving the lessee ten days from the receipt of the notice to show cause why the lease should not be cancelled. At that point one of four things can happen:

The lessee can ignore the notice, in which event action should be taken to cancel the lease.

The lessee can refute the alleged violations by satisfying the Secretary that there has been no infraction, in which event the notice should be withdrawn.

In spite of the lessee's arguments, the Secretary could find that a material non-curable breach has taken place, in which event he should proceed to cancel the lease.

The Secretary can determine that a breach has taken place in spite of the lessee's arguments to the contrary, but that it is correctable and the lessee agrees to take corrective action. In that event, the lessee should be given a reasonable time to correct the breach. Sometimes a default provision in a lease will specify reasonable times for curing breaches, such as, 30 days for those correctable by the payment of money and 60 days for all others. In that event, the specified time periods will be considered the reasonable periods required by the regulation.

If the lessee fails to correct the breach within the reasonable period allowed, if he fails to respond to a show cause notice, or if it is determined that a non-curable breach has taken place, the lessee should be notified forthwith in writing that his lease is cancelled and demand should be made for payment of all outstanding lease obligations and for surrender of the leased premises. The notice of cancellations must advise the lessee of his right to appeal pursuant to 25 CFR 2.

If the breach of the lease can be satisfied by the payment of damages, the Secretary can approve the damage settlement agreed upon by

the lessor and the lessee, or if the Secretary granted the lease he can agree to a damage settlement.

Certain tribal housing leases to individual members or to tribal housing authorities can contain language which prohibits cancellation of the lease while encumbered to secure financing provided or underwritten by an agency of the United States. (Sec. 162.14)

[The proposed regulations would provide that if a lease calls for different remedies in case of default than those specified in the regulations, the default provisions of the lease will govern.]

Grazing Units Excepted. Lands within grazing units are not leased or permitted under 25 CFR 162. They are administered under 25 CFR 166, the General Grazing Regulations. (Sec. 162.19)

Regulations for Specific Reservations. Part 162 contains several sections which apply only to specific reservations:

Sec. 162.15 Crow
Sec. 162.16 Fort Belknap
Sec. 162.17 Cabazon, Augustine and Torres-Martinez
Sec. 162.18 Colorado River
Sec. 162.20 San Xavier and Salt River

Real Estates Services staff working on those reservations should become familiar with the details of those sections.

[The proposed regulations would eliminate the special sections for Fort Belknap and Colorado River and add a section applicable only to Tulalip.]

The following is a summary of the CFR and USC authorities for the granting of leases on tribal and individually-owned land.

Negotiated Leases	CFR	Statutory Reference
Adults, other than those under legal disability.	162.3	Act of Aug. 9, 1955
Adults on behalf of their minors or those for whom they stand in loco parentis.		
Guardian, conservator, or fiduciary legally appointed for a minor, non compos mentis, or person under other legal disability.		

Negotiated Leases	CFR	Statutory Reference
Tribes and tribal corporations acting through appropriate officials.		Act of June 18, 1934; 25 U.S.C. 476 and 477. Act of Aug. 9, 1955; 25 U.S.C. 415.
Secretary of the Interior in behalf of:		
Persons who are non compos mentis;	162.2(a)(1) 162.6 (b & c)	
Orphaned minors;	162.2(a)(2) 162.6 (b & c)	
the undetermined heirs of a decedant's estate	162.2(a)(3) 162.6 (b & c)	Act of July 8, 1940; 25 U.S.C. 380. Act of Aug. 9, 1955; 25 U.S.C. 415a.
Heirs of devisees unable to agree upon a lease for a 3 month period, provided the land is not in use by one of the heirs;	162.2(a)(4) 162.6(c)	Act of July 8, 1940; 25 U.S.C. 380. Act of Aug. 9, 1955; 25 U.S.C. 415a.
Indians giving written authority--power of attorney	162.2(a)(5) 162.6 (b & c)	
An adult whose whereabouts are unknown	162.2(b) 162.6(c)	

Advertised Leases

Same as above--preferred where Secretary acts under the 1940 Act on 3 month notice to heirs unable to agree, but not mandatory where fair annual rental is obtained.

Handout II-c is a summary of standard forms used in surface leasing.

Quiz - Session Two
Surface Leasing Regulations

True/False

T F 1. Regulations are a form of administrative law which are secondary to, but equally as enforceable as, statutory law.

T F 2. Authority to waive regulations set forth in 25 CFR 162 is delegated to the Area Directors.

T F 3. All leases must be in the form approved by the Secretary of the Interior.

T F 4. A lessee must, when in violation of the terms of his lease, be provided with a written notice of such violation and given 20 days in which to show cause why the lease shouldn't be cancelled.

T F 5. Improvements placed on the land generally become the property of the landowner after lease expiration, unless provisions to the contrary are provided in the lease.

Completion

1. Leasing regulations are binding on _____ of Indian lands, Indian _____, and on _____ and _____ of the Department of the Interior.

2. _____ _____ land means both trust and restricted land beneficially owned by Indian individuals.

3. _____ land is land under the jurisdiction of the BIA, title to which is vested in the U.S., and which is neither tribal nor individually-owned.

4. A revocable privilege to use land is known as a _____.

5. Most leases of Indian trust lands must be for the fair market value; exceptions include leasing for certain _____ or _____ purposes or to a member of the lessee's own _____.

6. Tribes may lease their land for less than fair market value for subsidizing a _____ _____ or for certain _____ purposes.

7. Surety bonds may be required to protect the lessor's interest by requiring the bond to cover (1) one year's _____, (2) the cost of any _____ to be placed on the land, or (3) for other lease _____.

8. The maximum term for which a lease may be granted is specified by _____ and depends on _____, _____, and other specified factors.

9. Leases, excepting those based on a _____ of _____ produced by the land, must provide for a _____ review of equities involved, at not less than _____ year intervals.

10. Generally any _____, assignment, amendments or _____ of a lease may only be made with Secretarial approval and the _____ consent of all lessors, _____ or _____.

Session Three

Agricultural Leases

Outline - Session Three

Agricultural Leases

A. Leases of Developed Agricultural Land

1. Dry Farm and Farm Pasture Leases

a. Term
b. Rental
c. Conservation and Land Use Requirements

2. Leases of Irrigated Land

a. Term
b. Rental
c. Operation and Maintenance Charges

B. Agricultural Development Leases

1. Term
2. Rental
3. Additional Development Lease Provisions
4. Agricultural Leasehold Improvements
5. Land Use Stipulations

C. Agricultural Leasing Procedures and Records

1. Leasing Action Plan
2. Leasing Check List
3. Compliance and Follow-up Suspense Systems
4. Automated Systems

Learning Objectives. Participants should:

1. Know and understand the basic requirements and delegations of authority for approval of dry farm, farm pasture, and irrigated farm leases.

2. Know and understand how to properly complete for approval a lease document for (a) a dry farm lease, (b) a farm pasture lease, and (c) an irrigated farm lease.

3. Know and understand how to prepare an agricultural development lease for approval.

4. Know and understand how to propose and negotiate a development lease to maximize improvement to the property and income to the owner.

5. Know and understand the administrative leasing system and the records and reporting systems for the purpose of achieving greater economic administrative efficiency.

AGRICULTURAL LEASES

Of the 52 million acres of Indian trust land, approximately 10% or just over 5 million acres are covered by surface leases. Agricultural leases represent over half of the total number of leases on trust land, but they cover about 95% of the total acreage leased and produce about three-fourths of the total surface lease income. For many Indians agricultural lease rentals are a significant part of their total income, and, in some cases, they are their only source of income. Many tribes rely heavily on agricultural lease income to help finance their vital functions. Although some of the agricultural leasing activities may seem repetitive, time consuming, frustrating, and sometimes even boring, Real Estate Services personnel should take great pride in the role they play not only in fulfilling the Government's trust responsibilities, but also in contributing to the economic well-being of Indian people.

Leases of Developed Agricultural Land.

The vast majority of agricultural leases cover developed farm land, and, consequently, will be for short terms, i.e., for ten years or less. They represent the major leasing workload at most agencies and are made on the standard lease, (Farming and Grazing, or Farm Pasture), Form 5-5441, or an Area or Agency adaptation thereof. Handout III-A is a copy of Standard Form 5-5441, and Handout III-B is an adaptation used in the Aberdeen Area. Note that the adapted lease is no longer Form 5-5441, since the authority to approve or revise official forms has been retained at the Deputy Assistant Secretary level.

Form 5-5441 is a relatively simple agreement, the substantive provisions of which comprise less than two pages. Yet, when carefully completed it serves its intended purpose admirably as attested by the fact that is has been in use for perhaps fifty years or longer, with only minor changes. It has been the basic document in several hundred thousand lease contracts with relatively little controversy or few problems arising because of its provisions.

We will compare Handouts III-A and III-B to see what changes have been made in adapting the form for local use. If your Area or Agency has adapted Form 5-5441 for local use, it would be beneficial to review your changes in detail.

Overlooking the obvious, such as updating the CFR references and changing the title of the document, we see that a clause has been added to the first paragraph of the lease limiting the purposes for which the property can be used to "dry farming and grazing."

The next major change is in numbered provision 2 where the grace period of interest free rent delinquencies has been reduced from 30 days to 10 days and the interest rate has been increased from 6 to 10 percent. Both changes are desirable. Some tenants will take advantage of every interest free day allowed before they make rental

payments, so it is advisable to keep the period to a reasonable minimum. Also, an interest rate on delinquent rent below the going interest rate on borrowed money invites a lessee to "borrow" at the lessor's low interest rate for as long as he can get away with that practice. If possible, the interest rate on delinquent rentals should float at 2 to 3 percent over the prime interest rate in the area where the land is located.

Handout III-B has dropped provision 3 of Form 5-5441 "Operation and Maintenance Assessments" since it is superfluous to a dry farm lease.

Provision 4, "Repairs", has been revised and retitled "Care of Premises." In addition to the existing provisions, language has been added prohibiting waste or the removal or destruction of improvements and trees, and requiring the premises be kept sightly. These are worthwhile additions.

In Handout III-B, the requirement for approval of sureties in "Sublease and Assignments" provision has been dropped, a questionable deletion in view of 25 CFR 162.12(a).

The "Reservations" paragraph has been expanded to also include the right to grant mineral (in addition to oil and gas), business, signboard, industrial, and sand and gravel leases and permits on the premises. These are also worthwhile additions.

Finally, an additional clause entitled "Bond" has been added pursuant to which the Secretary can require the lessee to furnish a bond to guarantee compliance with the lease. It is important that bonding requirements be covered in leases, and, if the form being used does not contain a provision, one should be added as a part of the "Additional Provisions" which are included in most agricultural leases.

Decisions about bonding are among the most difficult that must be made in administering the lease program. Of course, one of the primary reasons for this is the fact that wide discretion exists in deciding what types and amounts of bonds will be required in a given lease. Ideally, lessees would agree to furnish bonds to cover all of the lease obligations, including rental payments, maintenance of the premises, performance of all construction and improvement clauses, weed control, and pre-expiration requirements, such as cotton stubble plow, etc. However, as pointed out in the leasing manual, "Experience has shown that excessive bonding requirements can work to the disadvantage of the landowner." (54 IAM 5.3) Bonds represent a substantial expense and commitment of assets by the lessee. In the final analysis, the requirement for excessive bonds will reduce the rental that potential lessees will pay. Furthermore, extensive bonding requirements will substantially reduce the pool of potential lessees. A higher percentage of farmers, particularly those who farm leased land, must rely heavily on borrowed funds to finance rental, equipment, seed, fertilizer, herbicide, and insecticide expenses; in other words, to finance all of

their farming operations. If substantial bonding costs are added to the other expenses which must be financed, many farmers will be unable to secure financing and will be unable to lease land.

Undoubtedly, situations will arise where a decision must be made whether to waive needed bonds or forego leasing lands. When that happens, it is important that the record be fully documented to support whatever decision is made.

Bonding requirements can be met by providing corporate surety bonds, negotiable securities, including negotiable United States Treasury Bonds, time certificates of deposit, or cash. The practice of accepting personal surety bonds, which once was common in some parts of the country, should be avoided. Where some form of bond other than cash or surety is provided, the Secretary should be furnished a power of attorney or assignment which will enable him to unilaterally execute on the bond if necessary.

Handout III-B includes additional lease requirements supplementing the basic agricultural lease provisions. Most farming leases require additional lease provisions and Form 5-5441 anticipates that need by including a provision for referencing such additions. The particular additions in Handout III-B include the following:

1. A statement that the additional provisions govern if they conflict with anything in the printed form;

2. Language specifying rights to inspect the leased premises;

3. A reservation of residence and requirements for insurance and maintenance of the other improvements;

4. Reservation of rights to gather native fruits and nuts, engage in hunting and fishing, use excess water, and take trees, as well as restrictions on the use of places of burial;

5. Restrictions on pasturing crops under a crop share lease or diverting land from production under Federal crop programs;

6. Various surrender provisions;

7. Reservation of a right-of-entry for seismic exploration;

8. A restriction on the payment of rent more than 30 days prior to due date and a requirement for proof of direct rental payments;

9. Various soil conservation requirements with predetermined per acre damages for failure to comply; and,

10. A place where specified practices can be delineated.

The additional provisions that are added to agricultural leases at your Agency are those which have been carefully developed with your Land Operations staff.

Dry Farm and Farm Pasture Leases. In addition to the above comments, there are a few features of dry farm and farm pasture leases that need to be discussed.

Term. The maximum term for dry farm and farm pasture leases on developed land is five years. If crop rotation requirements or other considerations justify the five year term, it should be granted. In some cases, depending on local practices, the volatility of the rental market, the types of crops being grown, as well as other factors, it may be advisable to limit dry farm leases to shorter terms. A lease should never be granted for the maximum allowable term just because that term is legal. If it is necessary to lease for less than fair annual rental, every effort should be made to limit the term to one year.

Rental. Indian landowners have the right, in most cases, to negotiate leases on their land. Although the Secretary can approve a negotiated lease which provides for less than fair annual rental if he determines that it is in the best interests of the landowners, in most cases it will be advisable to require that such leases be advertised.

A crop share with a minimum is an ideal rental arrangement, especially if the minimum is at, or close to, the fair annual rental. Some lenders who finance farming operations are taking the position that there should be no minimum rental and the lessor should only receive a share of the crop. If it becomes necessary to accept such an arrangement, care should be taken that the crop share is large enough to compensate the lessor for additional risks involved.

Crop share leases do present special problems for the trustee. The necessity for a rental bond becomes more pressing. Furthermore, greater oversight of crop harvesting and sale needs to be exercised to insure that the lessor receives the agreed share.

Conservation and Land Use Requirements. The conservation and land use requirements for each lease need to be developed by the Land Operations staff in sufficient time to be available when leases are being negotiated or advertised. This requires careful planning and coordination by Real Estate Services personnel. The Appraisal staff should also be made aware of the requirements since they can have a major impact on the rental evaluation.

Leases of Irrigated Land. Most of the above comments also apply to leases of irrigated lands; however, the following additional points need to be considered.

Term. While a term of ten years for leases of irrigated land can be granted or approved, there are few instances where that term is

justified. If substantial amounts of deferred maintenance have been allowed to accrue, it may be necessary to grant a term longer than five years to induce the lessee to perform such maintenance. This can include releveling of fields, eradication of serious weed infestations, refurbishing distribution canals and drains, and repairing or replacing wells and pumps. In fact, the condition of irrigated land can be allowed to deteriorate to the point where a development lease will have to be granted to bring it back into production. In many cases when this happens, it is due to a failure to enforce the provisions of previous leases.

Rental. A number of factors will influence the fair rental value of irrigated land. In addition to the normal value factors, they can include the quantity, quality, and cost of water; the existence of crop allotments; and the condition of irrigation facilities. In arriving at value estimates, appraisers should be encouraged to consider comparable lands both on and off the reservation. Comparison limited to other lands on the reservation has in the past led to the perpetuation of unfair rental rates, almost always on the low side. Advertising should be encouraged to test the market and when feasible crop share provisions should be included in leases.

Operation and Maintenance Charges. Lands within an irrigation project are subject to annual operation and maintenance charges. These charges are assessed against each acre of land within the project even if no water is delivered. If the charges are not paid, they become a lien against the land. It is therefore important to keep project lands in productive use.

Payment of irrigation operation and maintenance charges are the responsibility of the lessee on the leased land. A provision to that effect is a part of Form 5-5441 and is required by the regulations. Consideration should be given to requiring a bond to assure payment of O&M charges; however, the Bureau can usually enforce payment effectively by refusing to deliver water until the charges are paid. Most problems arise when Bureau personnel, for some misguided reason, deliver water without requiring payment when due.

If it becomes obvious that land within a project is not in fact irrigable because of the inability of the project to deliver water, topography, high water table or drainage problems, salt or soil texture problems, or for any other reason, consideration should be given by the project officials to redesignation of the land so it is no longer part of the project and not subject to annual assessments.

Agricultural Development Leases.

Agricultural development leases are one of the main ways Indian landowners have been able to bring raw undeveloped lands into production. This type of lease has also been used in some cases to restore the productivity of land whose condition has been allowed to

deteriorate to the point that major redevelopment expenditures are required. Many factors are involved in determining the feasibility of a proposed development of land for agricultural purposes. We will discuss several of those which need to be considered when a lease is the vehicle to be used for accomplishing such development.

Handout III-B also contains provisions included in a development lease of irrigable land. Those provisions were added to constitute the entire agreement and they contain the additional lease provisions drafted by the Real Estate Services staff.

Term. As we discussed in Session Two, a lease may be made for a term up to 25 years for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops. Two factors need to be considered in deciding whether a long-term agricultural lease is authorized. The first is the necessity for a substantial investment, and the second is the type of crops which qualify as "specialized." An investment is substantial if it cannot be recovered along with a reasonable profit within the term for which a non-development lease can be granted. It is necessary if the land cannot be profitably farmed without it.

The question of what constitutes a specialized crop has been more troublesome. Some crops, such as various fruits and nuts which require the planting and nurturing of trees that will not produce for several years, are generally conceded by everyone to be specialized. Annual crops, such as corn or wheat, and some biannuals, such as alfalfa and other grasses, do not clearly fall within the term "specialized crop." The Interior Solicitor considered this question in 1963, and issued opinion M-36651 in which he found that "specialized crops" include all those which can be feasibly grown on a parcel of ground only if a substantial investment is made in the improvement of the land. "In deciding whether to approve or disapprove a lease it will be necessary to consider the crop or crops which the prospective lessee proposes to grow, and to determine whether or not a substantial investment in the improvement of the land is necessary for that purpose. If it is, and the lessee is required to make such an investment, you are authorized to approve it. If the land need not be improved in order to grow the proposed crop, or if the investment is not substantial, the lease should not be approved." (M-36651, p. 12.)

In determining the precise term to be granted for a particular lease proposal, it is necessary to carefully analyze a number of things:

1. The amount of the investment required and the period needed to recover that investment;

2. The period of time it will reasonably take to accomplish the development;

3. The period of time before the land will produce at its optimum level;

4. The period of time it will take the particular crops being grown to reach maturity;

5. The amount that should reasonably be recovered as a return on the investment and the period necessary for that purpose; and

6. The amount representing a reasonable profit for developing the land and assuming the risks involved, and the period necessary to recover that amount.

The term of a development lease may also be influenced by the requirements of lending institutions which are involved in financing the development.

Finally, the term can be shortened by whatever rental concessions the lessor is willing to make in order to speed up the recovery of development costs.

Rental. Step rate rentals are common in agricultural development. Typically, the rental will start at a modest level, perhaps even at a nominal level, and increase by increments during the first eight to ten years. Handout III-C shows a ten year graduation. In the actual lease from which the handout was taken, the rent started at $4 per acre per year and increased at the rate of $4 per year for the first five years after which it increased in increments of $2 per acre per year until it reached $30 per acre in the tenth year. This strategy maintained the rental burden at a low level during the period of development and while crops were being established. It also enabled the lessee to begin significant recovery of development costs early in the lease, thereby keeping the amount which had to be recovered as a return on investment without bonds.

In our example, the rent for the tenth through the twenty-fifth year represented the payment of fair annual rental on the undeveloped land calculated at the time the lease was granted with a modest upward adjustment for anticipated inflation. In order to protect the lessor from further inflation, the lease provided for a one-fifth share of the crop beginning in the tenth year, insofar as that share exceeded the guaranteed minimum. Crop share provisions in agricultural development leases are particularly appropriate since they reflect the actual performance of the land being leased.

If an agricultural development lease for a term longer than ten years does not contain a crop share or percentage provision, it should call for rental reappraisals or cost of living adjustments to protect the lessor.

Additional Development Lease Provisions. Handout III-C, Supplement I, contains examples of provisions which should be considered when preparing an agricultural development lease. Those which should be given particular attention are:

1. An annual accounting clause if the lease is based on crop shares or percentages of gross income. If not, a rental adjustment-reappraisal or cost of living adjustment clause needs to be considered;

2. An improvements clause specifying which improvements belong to the lessor and which can be removed by the lessee and when;

3. Repair and operation and maintenance clauses requiring the lessee to keep the improvements in good operating condition;

4. An encumbrance clause detailing the lessee's rights to encumber the leasehold estate;

5. An inspection clause pursuant to which the lessor and the Secretary can enter the leased premises for inspection purposes; and

6. A water supply provision which sets out the lessee's rights and obligations to develop and use irrigated water.

Agricultural Leasehold Improvements. Leasehold improvements which qualify a proposal for a long-term agricultural development lease must be reasonably necessary to produce the agreed upon crops. Unnecessary improvements which are proposed by the lessee for his own convenience or to suit his own particular desires should not be considered in determining whether a lease should be approved. Some of the improvement which may be involved in an acceptable development proposal are as follows:

1. Land clearing by removing and disposing of native vegetation, rocks, etc. and weed eradication;

2. Land leveling, contouring, shaping, and bedding;

3. Construction of ditches, canals, gates, and other structures, or drilling and equipping wells for irrigation and drainage;

4. Construction on farm roads;

5. Installation of sprinklers or other equipment for distribution of irrigation water;

6. Construction of farm headquarters, fences, and other related improvements;

7. Treatment of soils to make them suitable for growing crops; and

8. Planting nursery stock to develop orchards or vineyards.

The development lease should clearly set out the types of improvements agreed upon, the detailed specifications for construction of such improvements, and the time frame within which they must be completed. The lease should also require the lessee to provide detailed plans for approval before he is allowed to commence construction. Supplement No. II to Handout III-C, is an example of the type of provisions and kind of detail that are desirable.

Land Use Stipulations. All agricultural leases need some form of land use as stipulations, but in a development lease they are of great importance. Because of the long term involved, the lessor and the Secretary will have little opportunity to correct improper practices if they are not proscribed in the lease document. Supplement No. III to Handout III-C is an example of land use stipulations which have been used. They include requirements for preparation of a conservation land use plan and compliance with anti-pollution requirements. They need to be supplemented by the addition of language regulating the application of herbicides, insecticides, and other chemicals on the leased premises.

Agricultural Leasing Procedures and Records.

As we mentioned earlier in this session, agricultural leasing represents a substantial portion of the total leasing workload in the Bureau of Indian Affairs. Due to the large number of leases in force, the fact that they are for relatively short terms, the small acreages involved in many of the tracts, the large numbers of fractional interest owners, and the varied rentals and payment methods, the Real Estate Services staff is frequently in danger of being buried under an avalanche of clerical detail and processing requirements. Management problems threaten to become even more difficult as land ownerships continue to fractionate and resources of personnel and funding become even scarcer.

Each agency should periodically review its own procedures to systemize and simplify operations. The staff needs to develop action plans and check-lists to facilitate the orderly operation of the lease program. They need to foster a close working relationship with the Land Operations, Appraisal, and IIM staffs who also have responsibilities in the leasing program. These organizations should work together in striving to eliminate duplication of records and in developing plans for the orderly input of each into the leasing process.

Leasing Action Plan. Handout III-D is an example of a leasing action plan which can be adapted to your particular plan. Like all action plans, this one has to be developed in cooperation with the other

Agency staff involved in the leasing process so that each branch knows what they are responsible for and the time within which each is obliged to perform.

Leasing Checklist. Handout III-E is a checklist that can be used in preparing lease assemblies for approval action by the Superintendent. This document can also be tailored to fit your operation and its regular use will greatly assist you in properly preparing lease documentation.

Compliance and Follow-up Suspense Systems. Each agency needs a suspense or follow-up system to insure that timely action is taken to:

1. Bill lessees for rent;

2. Review bonds and insurance coverage;

3. Field check for compliance with lease covenants;

4. Request appraisals, farm plans, and stipulations prior to re-leasing lands; and

5. Notify land owners that leases are expiring.

A suspense or follow-up system can be developed using color-coded cards or files, ticklers, or other suspense techniques.

Automated Systems. Automated data processing systems will greatly enhance the record keeping and follow-up processes of the Real Estate Services program in general and the surface leasing activities in particular. The following procedures are readily adaptable to automation:

1. Requesting appraisals;

2. Requesting Land Operations preparation of farm plans and stipulations;

3. Notifying land owners of lease expiration;

4. Preparation of payment schedules'

5. Rental billing;

6. Requesting Land Operations compliance checks;

7. Follow-up actions on bonding and insurance;

8. Preparation of periodic reports; and

9. Storage and retrieval of mailing lists.

Quiz - Session Three
Agricultural Leases

True/False

T F 1. The majority of agricultural leases are for terms of ten or fewer years.

T F 2. The Secretary of the Interior can require the lessee to post a bond, which is for the purpose of guaranteeing compliance with the terms of the lease.

T F 3. Excessive bonding requirements can be detrimental to the interests of the Indian landowner.

T F 4. Indian landowners have the right in all cases to negotiate leases on their lands.

T F 5. "Step rate" rentals are the exception, not the rule, in agricultural development leases.

Completion

1. The "grace" period in which delinquent rents can be paid without penalty is _____ days; when the "grace" period has passed without payment, interest in the amount of _____% is assessed.

2. Bonding requirements can be met in a number of ways; among these are U.S. Treasury _____, time certificates of _____, and cash. The use of personal surety bonds should be _____.

3. The maximum term for dry farm and farm pasture leases on developed land is _____ years; however, every effort should be made to _____ dry farm leases to shorter terms, unless special considerations (such as _____ rotations) are involved.

4. The ideal crop share lease contains a _____ rent in addition to the percentage of the crop payment to the lessor.

5. Conservation and land use requirements are developed by the Branch of _____ _____ and these requirements should be made known to the _____ _____ so that their impact on market value can be determined.

6. Irrigated lands can be leased for a _____ year term; the operations and maintenance changes assessed on these leases, whether _____ or _____ of production, constitute a _____ against the land if not paid.

7. Withholding of water _____ is the best way to guarantee payment of operation and maintenance charges.

8. Agricultural development leases can be for a term of _____ years; two criteria to use when evaluating a proposed development lease are the substantially of _____ and whether the crops are "_____" crops.

9. Agricultural development leases with terms in excess of ten years should protect the lessor's interests by requiring a _____ _____ or a _____ _____ _____ adjustment.

10. Compliance by lessees with the terms of the leases is important, and each realty office should have a _____-_____ _____ system to monitor compliance; minimum essentials of such a system include _____ lessees for rent, _____ bonding and insurance requirements, _____ field checks for _____, timely requesting of _____, farm _____ and _____ and notifying land owners in advance of expiring _____.

Session Four

Business Leases

Outline - Session Four

Business Leases

A. Short-term Leases

B. Development Leases

1. Commercial Development Leases

   a. Term
   b. Rental
   c. Improvement Requirements
   d. Encumbrance Provisions
   e. Subleases and Assignments

2. Residential Development Leases

   a. Term
   b. Rental
   c. Rental Adjustments
   d. Improvement Requirements
   e. Financing Requirements
   f. Subleases and Assignments

3. Recreational Development Leases

   a. Term
   b. Rental
   c. Improvement Requirements
   d. Financing Considerations

4. Mixed Development Leases

Learning Objectives. Participants should:

1. Know and understand development lease requirements to insure maximum benefits to the landowner.

2. Know and understand the delegations of authority and processing of documents for proper preparation and approval of a business development lease.

3. Know and understand the trustee's role and responsibility for business leases.

BUSINESS LEASES

Until 1962, all surface leases on Indian land were considered to be either "agricultural" leases or "business" leases. In other words, any surface lease for a purpose other than farming was a business lease and utilized Form 5-5445. In 1962, 1963, and 1964, the Secretary approved Forms 5-5448, 5-5460, and 5-5461, all of which are housing or residential lease forms designed for Indian housing purposes. At the present time the term "business lease" can be considered to encompass all surface leases on Indian land other than agricultural and Indian housing leases. This includes leases for public, religious, educational, recreational, residential (with the exception mentioned), commercial, and industrial purposes.

The full authority of the Secretary to approve business leases made in conformity with 25 CFR 162 has been delegated to Area Directors. They have redelegated some authority to Superintendents, but the extent of the redelegations varies from Area to Area and sometimes differs among the agencies within the same Area. You should review the specific delegations as they apply to your Agency. In some Areas, the Superintendents have been redelegated approval authority, but before they exercise their authority to approve certain types of leases, they must have the leases reviewed by Area staff.

Short-term Business Leases.

In our discussion, we will consider any lease for a term for ten years or less to be a short-term lease. Furthermore, we will assume that a short-term lease does not involve substantial development of the leased premises by the lessee; although some development or rehabilitation of property may be economically feasible under a lease of ten years or less.

Handout IV-A is a copy of the business lease Form 5-5445. You will note that it is very similar to the Farming Lease discussed during Session Three. In fact, the only substantive provision in the business form that is not in the farming lease is paragraph 7, the Rental Adjustment provision. Like the farming lease, Form 5-5445 is designed to facilitate supplementation with additional provisions and some additions will obviously be required in all but the simplest leases of unimproved land.

Since surface leases are limited in term to "the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices" (25 CFR 162.8), it is hard to justify a non-development business lease for a term longer than five years. Repair, performance of deferred maintenance, and some minor improvement might be justification for a term between five and ten years.

An exception to the ten year limitation on a non-development lease is a situation where the landowner develops the property to the specifications of the lessee with special purpose type improvements for which there is a limited market and leases the improved property for a term sufficient to guarantee the recovery of the investment. Industrial development leases are sometimes made on this basis.

Whenever a lease is made on developed property, it should contain detailed provisions concerning the condition of the improvements, responsibility for repair and maintenance, obtaining insurance, and payment of utility costs. It is advisable in all such leases to require a pre-possession inventory and condition survey signed by both parties, as well as one at the time possession is returned to the lessor. Security deposits or bonds should also be required. Although the lease may require the lessee to carry hazard insurance on the improvements, it is far better to provide that the owner will carry such insurance, recovering the cost as part of the rent or as a separate charge in addition to the rent.

Development Leases.

The 1955 Surface Leasing Act authorized business leases for terms up to 25 years with a renewal or extension for one term not to exceed 25 years. In effect, this allows a lease for a 50 year term. Since 1958, the Act has been amended some 26 times to authorize leases up to 99 years on about 28 reservations or other areas of trust land. Separate legislation has authorized 99 year leases on two other reservations. According to a recent annual report, there are about 4,500 business leases covering about 110,000 acres of trust land with an average annual rental of $150 per acre, compared to $10 per acre for agricultural leases and $13 per acre for "other" leases, mainly Indian housing leases.

Almost all business development lease proposals involve several common problems. These include deciding what term is necessary and justifiable, determining a proper rental and methods to preserve an equitable income flow to the lessor over a period of many years, and preserving the right to decide who will constitute the lessee without unduly restricting the ability to sublease or assign. Since solving these problems will vary somewhat with different types of leases, we will discuss them under four broad categories, namely; commercial, residential, recreational, and mixed uses.

Commercial Development Leases. Commercial development leases include leases of small tracts to be used as sites for single business enterprises, such as a filling station, fast food restaurant, grocery or drug store, etc. They can also cover larger tracts to be developed as shopping centers, office complexes, hotels, apartments, banks, etc.

Term. Long-term leases should only be granted for development that represents the highest and best use of the property. Commercial development usually stands at the apex of development potential, but is should be compatible with the established uses of adjoining lands.

The term of a potential lease will be dictated to a large extent by the nature and extent of the improvements to be made, the competition from similar property in the area, and the financing used to accomplish development. Most potential lessees will seek the longest term available, but even where greater authority exists, it is difficult to justify a term longer than 50 years (25 + 25). Some restricted development, such as filling stations, have been built on leases as short as 15 years, but an option for extension is frequently sought on such cases. Many smaller commercial developments can be fully amortized in 25 years, and in those situations, the lease should be confined to that term if possible.

If substantial competitive commercial land is available in the market for sale or lease, the lease term will have to be adjusted to meet the competition.

Where the potential lessee must rely on outside financing for development, the policy and desires of the lending institution will influence the term of the lease which must be granted. Sometimes lenders are limited by law or regulating agencies in making loans secured by leaseholds to those with specified minimum terms. In all cases, the lender will insist that the length of the lease exceed the terms of the loan by some margin, usually several years.

Rental. Commercial development leases should require the payment of an advance minimum rental based on the fair rental value of the property. If the development is of a scope that will require several years to accomplish, a step rate lease can be considered, but the minimum should graduate to the full fair annual rental within the time agreed upon for completion of development. Only in very short development leases should any thought be given to the residual value of improvements as part of the consideration for granting the lease. The benefit to lessors of acquiring improvements made under a long-term development lease at the time of the reversion is almost entirely illusory. In truth, such improvements will more frequently represent a liability than an asset.

All long-term leases must contain provisions for the periodic adjustment or supplementation of rentals. Pre-determined step rate increases, even where they exceed current fair rental values, do not fulfill this need for the simple reason that no one is endowed with the ability to foretell what a reasonable rental return will be at some time in the remote, or even relatively near, future.

The most common method of rent supplementation in commercial development leases is payment of specified percentages of gross income. Percentages

of net income are unsatisfactory because they rely to heavily on the particular entrepreneural ability of the individual lessee, and frequently give him virtually total control over the amount of net income. Unfortunately, rentals based on percentages of net income are an open invitation to fraud.

In leases where rents are based on percentages of gross income, it is essential that what constitutes the gross be very specifically defined. It usually includes all income from whatever source, less certain items, such as sales and excise taxes collected separately, credit for returned or exchanged merchandise, and amounts received in an approved sale of the leasehold itself or leasehold improvements. Frequently, commercial leases will involve two different types of gross income. The first is gross income from the operation of specific businesses, such as department stores, drug stores, restaurants, hotels, bars, shoe stores, beauty shops, etc. The second type of gross is the income derived from subleases of space in the development, such as offices, banks, shops, etc. If the lease is negotiated and rentals arrived at on the basis of payment of percentages from the operation of businesses, the definition of gross must clearly provide that these percentages are payable regardless of who actually operates those businesses; otherwise, the lessor may find that some or all of the business sites have been subleased and he is receiving percentages of sublease rentals rather than percentages of operating businesses.

Another situation to be avoided is one where the lessee subleases bare land and the sublessee develops the property. This should be prohibited unless the lease is negotiated on this premise and percentages or other adjustments are devised on that basis.

Arriving at the particular percentages of gross income to be paid as rent is a difficult task. Where substantial leasing of undeveloped land using percentage rentals has occurred in the same market, the experience with those leases can guide you.

Much data is available on percentages of gross charged as rental in commercial leases, but almost all are based on leases of developed property. If accurate estimates are available on the cost of development of the property under consideration, a ratio can be established between land value and development costs and percentages extrapolated from the available data. Handout IV-B is an example of the type of data available on percentages rentals. This is merely included for purposes of illustration and you should obtain the most current data available when you become involved in lease negotiations.

Another method of arriving at percentages is to use the projected income of the various businesses and subleases. Usually, percentages of projected income are used which will produce at least the minimum rentals plus a modest buffer within a reasonable time. In arriving at the buffer, it is important to remember that proposed lessees' projections of income are never conservative.

In cases where projections of income are not available or are not considered reliable, the establishment of percentages can be deferred for a period of time. Under this arrangement, at the end of the 5th or 6th year the gross income for the first 5 or 6 years is averaged and percentages determined which will equal the guaranteed annual minimum. You can also include this as a safety check in leases where uncertainty about predetermined percentages exists.

If percentage rentals are not suitable in a given commercial development lease situation, cost of living adjustments or reappraisals should be used. If cost of living adjustments are chosen, it is important that the specific index, base, and area of coverage be stated and how the adjustment will be made. It is also necessary to spell out the index figure in existence at the time of the lease, which will be the basis for determining future changes.

Rental reappraisals generally meet with substantial lessee resistance; nevertheless, in some leases it may be the only alternative. If possible, the reappraisal clause should require the parties to agree on a single appraiser or the Bureau should be responsible for the reappraisal, subject to administrative appeal if either party is dissatisfied. Reappraisals should be made on the premise that the highest and best use of the property has been determined for the term of the lease by the purposes specified in the lease. Also, the reappraisal should treat the land as if it was in its original undeveloped state and ignore all leasehold developments.

Improvement Requirements. Development leases must be very specific in describing the improvements which will be made. The lessee should be required to furnish schematics showing how the premises will be developed and a minimum dollar investment should be agreed upon and stated in the lease. The lessee should be required to furnish a general development plan and design showing the complete development of the leases premises within a short time after lease approval. The lease should also contain a schedule for each phase of development and give a specific time within which development will be completed. If the development is not completed as specified, the lessee should be penalized by increases in the minimum rents and/or deletion of undeveloped areas from the lease.

It is common to require lessees to furnish detailed plans prior to commencing actual construction of each improvement. This is done to insure that particular improvements satisfy the general development scheme both as to type and quality agreed to when the lease was granted.

Remember, unless the property is fully developed to the level originally anticipated, the lessor will never realize the rental income to which he is entitled.

Encumbrance Provisions. Leases should require that all encumbrances of the leasehold be approved. The lessee should not be

allowed to overfinance the development, and he should be required to invest the equity contemplated when the lease was negotiated. Under the present regulations, encumbrances can only be made to raise capital for development of the property. Encumbrancers demand that they be allowed to protect their loans. They insist on freedom to assign or sublease without approval and to limit their liability under the lease. While it is necessary to make these concessions, they should be limited to encumbrancers.

Subleases and Assignments. Subleases of commercial facilities should be subject to lessor and Secretary approval. If the subleases involve repetitive letting of similar space in a large development, such as suites in an office building or apartments, the need for individual sublease approval can be avoided by preapproving a sublease form and schedule of sublease rentals. In every case, however, the lessee should be required to furnish copies of subleases to the Agency. Subleases should be limited to 5 years or less unless they are based on percentages of gross or have rental adjustment provisions. Assignments of leases should not be permitted without approval. A proposed assignment to an entity that would not have been an acceptable original lessee should not be approved.

Residential Development Leases. For our purposes, residential development leases do not include Indian housing leases, or leases for development of conventional apartments or hotels. They do include development of single family homes, condominiums, and cooperative apartments. Purchase of residences constructed on leased land has not gained wide acceptance in the United States. Where comparable homesites are available for purchase, the vast majority of potential homeowners will select fee ownership. As a consequence, most residential development leasing is restricted to areas where comparable homesites cannot be acquired in fee. This usually occurs where no fee land is available for purchase due to land conveyance restrictions or monopoly ownership, or because particular land has special characteristics, location, or amenities which are not available on fee land or cannot be economically duplicated. Condominiums, cooperative apartments, and "summer" or "winter" homes are usually eacier to market on leaseholds than single family residences because of a slightly different ownership concept and the fact that they generally appeal to a different type of individual.

Term. The term of residential development leases will be controlled by marketability and financing requirements. Almost all will require a full 50 year lease and many will insist on terms running up to 99 years. Most have been made for terms of 60 to 75 years to allow for a full 55 years after the house is built and sold, plus a development period of 5 to 10 years. Obviously, such a lease can only be made on a reservation for which more than 25 + 25 authority has been given Congress.

Even where leases for these long terms are granted, you can anticipate problems when the remaining term of a residential lease or sublease falls below the minimum term necessary for refinancing and hence resale.

Rental. The development lease will provide for a minimum annual rental based on the fair annual rental value of the undeveloped land for residential purposes. Step rate leases are common to allow the lessee relief during the development phase. It is not desirable to lease more land than can be developed in 8 to 10 years and the step rate should not be allowed to exceed that period. The last step should equal or exceed the fair rental value of the property when the lease was made.

Individual residential sites are usually marketed by the lessee-developed in one of two ways. First, the developer subdivides the land, installs off-site improvements, and subleases charging a rental based on the value of the developed lot. Second, the developer subdivides the land, installs off-site improvements and subleases the lot with up-front payments which return his development and sales costs, and charges a sublease rental based on the raw land value. In many cases, the developer will construct houses on the land before subleasing and sell the houses to the sublessees, but the economics of the lot rental will still fit one of the two alternatives. It is sometimes difficult to determine if lot development costs are being recaptured up-front when a home sale is also involved because the lot development costs can be hidden in the total purchase price, but you should be able to make a determination based on the amounts charged for the sublease lot rentals.

This is important because most residental development leases provide that the lessor is to receive a percentage of the sublease rental income. If the percentage is negotiated on the understanding that the sublease rental will be based on the value of a developed lot, and, in fact, the rental is based on raw land value, the percentage clause will be meaningless.

The percentage is usually determined by comparing the value of the raw land that goes into the lots against the costs of subdividing an making off-site improvements. For instance, if the raw land value is $1,000 per lot and the subdivision and off-site improvements are $2,000 per lot, the lessor's percentage should be in the 30 to 33 percent range. However, if the lessee recovers all of his expenses of creating the lot when the sublease is made, the lessor should receive virtually all of the sublease lot rental.

Rental Adjustments. Rental adjustments in residential subleases present special problems. Some form of adjustment is necessary because even though the lessor's rental is based on a percentage of sublease income, if the sublease income is never adjusted, the percentage rental becomes a fixed rental.

Both home buyers and lending institutions are highly resistant to rental adjustments, although some of the buyer's resistance may be fading with the introduction of variable rate financing. Lending institutions will generally refuse to finance any improvements on a lease that provides for a indeterminate potential rent increase during the life of the mortgage. Some leases have been financed which provide for cost of living increases, but limited to a fixed maximum, such as 1 percent per year.

Another approach to rental adjustments is to provide for rental re-evaluation (1) when the sublease is resold, (2) if the sublease improvements are refinanced, and/or (3) at the time the mortgage is satisfied. Few lenders should object to this type of re-evaluation since in each case they are no longer a security holder. On the average, this can result in substantial protection of the lessor, if residences on leased land are refinanced or sold as frequently as those on fee land, which have averaged once every five years.

Improvement Requirements. Leases should require timely development to the agreed upon level of quality. Individual residences should meet specified standards, such as minimum square footage, style, quality of materials, landscaping, etc., and should be completed within a fixed time after construction is commenced. Developments such as golf courses, club houses, recreation centers, swimming pools, etc. should meet specified dollar investment requirements and should be completed within a fixed period.

The lessee should be required to submit general development plans and designs for approval within a short time after lease inception and approval of detailed plans should be required before any construction commences.

Financing Considerations. Lessees will frequently have financing tentatively arranged before the lease is executed. The lenders will usually want to review the lease document with particular attention to the encumbrance provisions. Their concerns will primarily involve:

1. The term of the lease to be sure it substantially exceeds the term of the mortgage;

2. Responsibility for rental payments and other lease obligations if the lessee defaults and pending foreclosure and sale;

3. Right of the lender to assign the lease or sublease the property in case of foreclosure;

4. Whether renewal options have been exercised;

5. Insurance requirements and the rights of the lender in case of casualty loss;

6. Requirement of notification of lender in case of lessee default under the lease, and the rights of the lender to cure such defaults; and

7. What rental adjustments can be imposed during the financing repayment period.

Subleases and Assignments. In large scale residential development leases, it is usual to allow the lessee to sublease without obtaining approval of each sublease. A sublease form is developed and approved by the parties, and a schedule of minimum sublease rents is agreed upon. The lessee can then sublease using the form and charging no less than the agreed rentals. The rental schedule for unleased lots should be reviewed and up-dated periodically if subleasing is going to take place over a period of years. The lessee should be required to furnish copies of all subleases to the Agency. The master lease and subleases will provide that if the master lease is cancelled, the subleases will survive as separate leases between the lessor and the sublessee; otherwise it would be impossible to finance construction or sale of individual residences.

Assignment of subleases should be allowed without approval, but any assignment of the master lease should be permitted only with the approval of all parties to the lease.

Recreation Development Leases. Very often leases for recreational development also include commercial and residential developments. In most cases, the recreational aspects are subordinate to the others. Situations will arise, however, where a recreational development is the sole or primary purpose for a lease. These leases entail very special considerations. Recreation is usually the basis for the most speculative type of development leases. Recreational sites are often at remote locations, frequently involve seasonal activities, are sometimes subject to severe fluctuations in demand over a period of time, and cover activities most easily discontinued in times of economic distress. It is therefore important that proponents of recreational development leases furnish feasibility studies prepared by competent individuals or organizations.

Term. Recreational development leases can be granted for the same terms as other types of business leases. The term in a particular leasing situation will be governed primarily by development costs and the period necessary to recover them. Financing requirements will also influence the term which should be granted.

Rental. A minimum rental equal to fair annual rental should be required. Step rates during development are reasonable. The lease should also require payment of percentages of gross income, or provide for periodic rental reappraisals or cost of living adjustments.

Improvement Requirements. General plans and a schedule of development, together with minimum development expenditures, should be required. Specific plans should be subject to approval. It is particularly important that this type of development be accomplished in a way that minimizes adverse effects on the surrounding area and is aesthetically harmonious with the existing environment.

Financing Considerations. Because of speculative nature of most recreational developments, financing will be more difficult to obtain, higher interest rates will be charged due to the greater risk, the length of the loan will be shorter than for other developments, and the ratio of loan to equity investment will be smaller. These facts make it more difficult to obtain recreational development, but they help offset some of the lessor's risk in entering into such leases.

Mixed Development Leases. Major development leases will usually include some features of commercial, residential, and recreational leases. Leases have been granted which include developments for hotel, apartment, single family residences, condominiums, golf course, club house, driving range, riding stables, office building, and shopping center with numerous individual businesses, including grocery supermarket, drug store, department store, jewelry store, shoe store, beauty shop, mens' and womens' clothing stores, florist shop, bank branch, book store, restaurant, bar, several fast food outlets, and others. In such a lease, it is necessary to arrive at percentages for each separate business, as well as percentages of sublease rentals for the non-commercial uses and for the commercial uses for which percentages of gross income are inappropriate.

In other respects, the term, improvement requirements, financing considerations, and other lease factors are those discussed previously.

Quiz - Session Four
Business Leases

True/False

T F 1. Authority to approve business leases has been delegated to the Area Directors.

T F 2. Business leases may be authorized for an initial term of 50 years and may contain a renewal clause of 49 years.

T F 3. Long term leases should only be granted for development purposes constituting the highest and best use of the land; it does not have to consider the established uses of adjoining lands.

T F 4. A good type of development lease is one where the lessee subleases the undeveloped land and allows the sublessee to develop the property.

T F 5. Subleases of commercial facilities need not be subject to Secretarial approval but must be approved by the lessor.

Completion

1. Generally speaking, short term business leases are for ____ or ____ years; these do not usually require substantial development of the leased premises.

2. The term of a commercial development lease will be influenced by a number of factors, chief among which are (1) the nature and extent of any _____ to be made, (2) competition from _____ _____ in the area, and the _____ used by the lessee in developing the premises.

3. Commercial development leases should require an _____ _____ rental based on the fair market value of the property.

4. Rentals based on a _____ ___ _____ are, unfortunately, susceptible to fraud on the part of the lessee.

5. If development is not completed according to schedules set forth in the lease, penalties of _____ _____ and loss of _____ _____ from the leases premises should be included.

6. Terms for residential development leases usually have a _____ year minimum and may go up to ____ years, but most fall in the _____ to _____ year range.

7. As a general rule, land in excess of what can be developed in ___ years should not be included in the lease.

Session Five

Drafting Development Leases

Outline - Session Five

Drafting Development Leases

A. Review of Development Lease Provisions

1. Parties
2. Description
3. Definitions
4. Term
5. Renewal
6. Rentals
7. Rental Adjustments
8. Accounting and Audits
9. Liens, Taxes, Utilities
10. Purpose of the Lease
11. Plans and Designs
12. Completion of Development
13. Non-responsibility Notices
14. Improvements
15. Delivery of Premises
16. Unlawful Use
17. Construction, Maintenance, Alterations, and Repairs
18. Indemnification
19. Fire and Damage Insurance
20. Public Liability Insurance
21. Rental Bond
22. Performance Bond
23. Companies Bonding and Insuring
24. Sublease, Assignment, Transfer
25. Status of Subleases
26. Leasehold Encumbrance
27. Lessor Paying Claims
28. Inspection of the Premises
29. Default
30. Holding Over
31. Attorney's Fees
32. No Partnership; Operation of Businesses
33. Lessee's Obligations
34. Payments and Notices
35. Eminent Domain
36. Lease Binding

37. Interest of Members of Congress
38. Validity
39. Lessor's Determinations, Consents, or Approvals
40. Termination of Federal Trust
41. Arbitration
42. Agreements for Utility Lines and Streets
43. Tax Immunity
44. Force Majeure
45. Affidavit of Lessee
46. Corporate Acknowledgement
47. Affidavit of Lessor

B. Completing and Agricultural Lease

Learning Objectives. Participants should:

1. Know and understand necessary variations in the terms and conditions used in developmental leases.

2. Know and understand how to select the various provisions needed to construct a development lease and how to prepare a simple agricultural development leases.

DRAFTING DEVELOPMENT LEASES

During Session Five, we will review in detail the provisions of a development lease. Handout V-A is a lease which contains the usual clauses found in a typical long-term development lease, with alternative provisions where appropriate. To facilitate our review, the clauses in the lease and in our text have a common numbering sequence. After we have completed our review, we will participate in an exercise during which we will draft an agricultural lease.

Review of Development Lease Provisions.

1. Parties. The opening clause of the lease identifies the parties and recites their legal status, whether individual, corporation, partnership, Indian Tribe, fiduciary, or other entity. When the lessor or lessee is other than an individual, it is customary to require copies of organizational documents, such as articles of incorporation, and evidence of authority to act, such as a resolution of the board of directors.

This clause also recites the date the lease is "made and entered into" which is another important element. The date that is inserted should be the date the first party signs the lease.

This clause of the lease also may contain the addresses of the parties where notices, rental payments, and other communications between the parties are to be delivered. If the addresses are not in this paragraph, they should be in paragraph 31, "Payments and Notices', or they may be inserted beneath the signatures at the end of the lease.

2. Description. The leased premises are usually described as aliquot parts of the rectangular survey system, such as the N 1/2 SW 1/4, Section 8, Township 1 North, Range 1 West, of the Fifth Principal Meridian, etc. Other commonly used descriptions refer to subdivided land giving lot and block numbers. Sometimes the description will be the street address of a building or the apartment or suite number for space within a building.

Descriptions may include reference to common facilities which the lessee has a right to use non-exclusively, such as parking areas, laundry rooms, access to lakes, etc. While air rights may seldom be encountered on Indian land, such rights are frequently very valuable in downtown urban areas and are described in leases.

Title status reports should be checked for names of the trust owners, their interests, an accurate land description, and the acreage.

3. Definitions. Terms which are frequently used in the lease and/or which have a complex or special meaning for the purpose of the lease are defined. Usually these will include the terms "Secretary," "gross receipts," and "approved encumbrance." The Handout contains

alternative definitions of gross receipts. The first should be used when the parties contemplate rent based on percentages of businesses as well as sublease income. The second definition would be used where the lessor is to receive percentages of businesses no matter who operates them. In that situation, a sublease which provides for square foot rentals without adequate percentages of income, would be unacceptable.

The definition of "approved encumbrance" is included here because the term is used in clauses other than the "Leasehold Encumbrance" clause.

4. Term. Frequently, a development lease will be structured to provide that the term will start when the lease receives Secretarial approval. If a lease is so worded, it is important that the date of approval be shown on the lease.

An alternate "Term" clause is included in the Handout for use when a term other than 25 years is appropriate and/or specific dates of commencement and termination are known.

5. Renewal. An option to renew is not automatic and should not be granted unless it is justifiable. The option is the unilateral right of the lessee who will exercise it only when it is to his advantage. The long-term leasing act limits the term on most reservations to 25 years with one option for not to exceed 25 years. The option clause usually requires the lessee to give one year's notice but he can exercise the right at any time prior to the last year of the original term. It is not unusual for a lessee to exercise the option immediately upon approval of the lease, thereby creating a fifty year lease.

6. Rentals. Rentals, other than those based on percentages of income from the property or businesses operated thereon, are usually paid annually in advance at the beginning date of the lease and on the respective anniversary dates thereafter. In some cases the rent may be paid monthly, quarterly, semi-annually, or whenever as agreed upon, but in those cases a rental bond for a full year's rent should be furnished.

The penalty for delinquent rental payments should be made to reflect an interest rate that is truly a penalty as compared to current bank rates. A rate of one and one-half percent per month would exceed a bank loan rate of 12 percent, for example, but a rate of 6 percent per year would give the lessee incentive to delay rental payments.

Handout V-A contains a rental clause with three alternates. The first rental clause can be used in a lease with a guaranteed minimum annual rental against percentages of the gross receipts of various businesses operated on the leased premises and percentages of sublease income. The last three paragraphs of this clause are standard and/or mandatory provisions which should be included in any selected rental clause as appropriate.

The first alternate rental clause is designed for use in a residential development lease where the property will be subdivided into residential lots and subleased. It calls for the payment of a percentage of the gross rental income from lots or a fixed annual rental, whichever is greater. This clause defines the term "gross rental income" and where it is used the definition of "gross income" in the "Definitions" clause should be eliminated.

The second alternate rental clause would be used in a lease for a single business site, such as a filling station. It specifies guaranteed minimum annual rentals against a percentage of gross receipts. This varies from the other clauses by requiring that percentage payments be made quarterly.

The third alternate rental clause would be used in a lease with a fixed annual rental subject to adjustment. The model is set up to be used with a five year step rate.

The percentage rental provisions are probably the most important of all in the long-term development lease in the sense that they must provide for a fair but adequate adjustment of return for the land to the lessor over the full length of the term and operate as equitably as possible with changes in economic conditions. Assuming the improvements contemplated will be the highest and best use for the immediate time and the foreseeable future and the values are represented in a proper proportion of land to building, the percentage rent can be established with some degree of accuracy.

Percentage rental adjustments on unimproved land leases generally fall into three categories. The first is based on a percentage of gross business done from a structure erected for a given purpose. Examples lending themselves readily to such computation are service stations, hotel or apartment rentals, restaurants, outdoor theaters, auto dealerships, supermarkets, and concessions and amusement operations.

In situations where the gross volume of business done is known or can be estimated within a reasonable limit of accuracy, the percentage factor can be arrived at by simply dividing the volume into the guaranteed fair market rental. For example, the lessee of an outdoor theater estimated a gross of $80,000 per year on a tract with minimum rental of $4,000. This worked out to 5 percent on admissions and proved to be operative. Another example involved a grocer doing $200,000 in gross business in a location near a tract he wished to lease and develop with a minimum rental of $800 per year. The computation of 1/2 percent should prove realistic and achieve higher returns if the land is adequately improved to attract more trade as the community grows and land values increase.

In cases where gross volumes are totally unpredictable, a lease clause might provide for establishment of a figure based on the acutal experience in business done over a period of time. For example, the

average annual business gross income over the first five years might be used in the formula for the percentage rental due the sixth and following years.

Rental adjustments of the minimum guaranteed rental contained within a percentage lease are perhaps a unique application but, over a period of time, may prove highly desirable from the landowner's viewpoint. In the lease of a 5-acre hotel site, consideration was given to the fact that over a period of time the income producing capability of the development might diminish to a point that its percentage rental based on gross business would not exceed the minimum rental even though the values had risen over the same period.

In the example used, the property was to be adequately developed and the percentage rental of business done seemed appropriate. However, after thirty years, more or less, the hotel might be outdated and its income drop because of more attractive competitive businesses. The rental adjustment was to be determined every five years and, based on the cost of living index, the minimum rental would be raised or lowered proportionately. The lease was for a 65-year period, and the adjustment factor may be influential in causing reconstruction to provide an adequate facility at a proper time or at least developing income for the landowner not otherwise attainable.

The second category of percentage rental adjustment is based on square foot rental income of various commercial or office rentals that may or may not lend themselves to percentage computation on gross business done. Obvious examples are professional offices such as medical, attorney, architect, governmental, etc. The percentage rental is based on the short-term sublease rental derived by the lessee which is adjusted upon renewal of each sublease. In this way, the lessor's income is adjusted accordingly. The lessee is allowed deductions for janitorial and utility operation expense. The percentage of square foot rentals might vary from 25 percent where buildings and land values are in a 2:1 ratio down to 12 to 15 percent where buildings occupy a much higher ratio to land value.

The third category is the percentage rental based upon long-term subleases on lots within a subdivision. Here the percentage is based upon the contributory values of the lessor's land and the lessee's offsite improvements.

The major successes in residential leasehold developments have been in situations of atmosphere rental. The country club fairway lots, view property either mountain or lakeshore, or apartments with common ground attractiveness are all examples of successful residential developments. The typical city block lot developments face keen competition with fee ownership parcels, and, unless alternative tracts are not comparable, such resistance in the market is inevitable.

Percentage rentals for sublot rental should be carefully evaluated on the basis of the lessor-lessee value ratios. In an area where unimproved land suitable for single-family residential development is valued at $5,000 per acre and the cost of improving the lots with street, curb, gutter, sewers, and other underground utilities, including platting and survey costs, are $10,000 per acre, the percentage share of lessor should be about 30 percent. If the situation changes and the developer then uses land worth $25,000 per acre for apartment development and invests offsite costs of $10,000 per acre, the lessor's share should increase to 60 percent or more. As long as the sublot rental rates reflect adequate return on the improved value of each lot, the profit to the developer from the sale of the house or apartment is of no real significance to the landowner.

Another example of such ratios is found where the developer utilized lakeshore property worth $25 per front foot and invests a total of $10 per foot in platting, surveying, and "rustic" road development. The lessor's share of sublot rental income should be from 60 percent or more. Prior to subleasing residential lots, a rental schedule should be prepared and approved indicating that the rate on each lot is valued at its proportionate share and the total will exceed the minimum rental of the land by some margin.

7. Rental Adjustment. Handout V-A contains a rental adjustment clause based on periodic reappraisals of the leased premises and an alternate clause for periodic cost of living adjustments. If development lease rentals are not based primarily on percentages of income produced by the land, 25 CFR 162.8 states that the lease shall provide for periodic review of the equities involved.

While the cost of living adjustments have no necessary relationship to the particular land covered by the lease, they do tend to protect the purchasing power of the agreed rental. Reappraisals are directly related to the particular land and reflect changes in the value of the leased premises, which may or may not preserve the relative value of the rental income stream.

Of course, if the rental income is based on percentages of income, a rental adjustment clause will not be needed; however, the percentage rental of leases of residential lot development is ineffective as a true rental adjustment factor for the lessor unless a periodic rental adjustment clause is inserted in each sublease. Once sublots are committed to a sublease, the percentage factor would not reflect any change in income. The periodic adjustment should be held to the minimum period necessary to allow an adequate and progressive leasing program. The 5-year adjustment has generally proven unacceptable to lessees or financing institutions in any large volume.

The following are examples of rental adjustments offered in known situations:

1. The Irving Ranch near Los Angeles, California, has rental adjustments to 6 percent of the appraised value of the lot on the 25th, 40th, and 55th anniversaries of a 75-year total;

2. The Mountain Development Company near Seattle, Washington, adjusts rentals to 6 percent of the leased land value at 10-year intervals throughout the term of the lease; and

3. Canyon Country Club and other residential developments in Palm Springs, California, limit rental adjustments to 1/2 percent per year upon the 35th anniversary of the sublease. (It is interesting here to note the sublot rental schedule was increased by the lessee approximately 50 percent over a 3-year period on unleased tracts.)

8. Accounting and Audits. Depending on the complexity of the percentage rental computation, the audit reports required can be made to fit the needs present. An accountant can best advise on the adequacy of the records kept and the wording used to prevent diversion of income from business done. The definition of gross receipts and the accounting provisions of business leases are key to the integrity of percentage rental leases. All income should always be based on gross business rather than net. In net operations the write-offs and depreciation taken become too broad to be interpreted fairly and lawsuits would be inevitable.

9. Liens, Taxes, Utilities. The responsibility for the payment of any applicable taxes and utility charges and keeping the leased premises free from liens should be placed on the lessee. If the lessor is totally relieved from any such payments, he is said to have a net lease (or 100 percent net). The lessee should have the right to post bond against enforcement of any lien he determines is not just and wants to litigate in court. It is not uncommon in major construction projects to have liens filed over relatively minor problems; so by allowing the lessee to post bonds such liens would not interfere with the scheduled construction or operation of the lease.

10. Purpose of the Lease. This clause is included to set out the intended uses of the leased premises which formed the basis for the negotiation of the various provisions, including the rentals. It is important to control the type of activity carried out on the property so as to keep it in use for its highest purpose and income potential. Before the lessee commences any use not contemplated or agreed to when the lease was negotiated, he should have to negotiate appropriate changes in the lease.

11. Plans and Designs. A plan for the overall development of the property can be discussed during negotiation of the lease but a final general development plan should be prepared and submitted for formal approval within a short time after the lease is approved as is feasible. This is needed to assure the lessor that the development planned can achieve the gross volumes of business to produce the income necessary to make the percentage provisions meaningful.

Before construction begins on any particular improvement, detailed plans are required to insure that it is in accord with the general development concept agreed to. The size of rooms in a motel, square footage of stores and offices, size of parking areas, landscaping, etc. are all reviewed as to size, quality, and architectural suitability to satisfy the overall development concept.

12. Completion of Development. A schedule specified in the lease providing for stages of completion of the integral parts of the total planned leased development should reflect a reasonably timed pattern for each portion. This can be made to coincide with the lessee's requirements which for a smaller development may be from 6 to 18 months or in the case of a large development may be from 6 to 8 years. Adequate time for plans, financing, and construction are considered, but a longer time than necessary not only delays percentage income but encourages lessees to speculate on such leases for profit. Penalties for failure to develop on a timely basis should be prov ided as the lease may not be cancellable once improvements are started. Penalties up to removal of an undeveloped portion from the leased premises may be advisable.

13. Non-responsibility Notices. Most states have laws which allow mechanics and materialmen to file liens against property for labor or materials furnished in the construction of improvements. Some of these states also permit lessors to prevent such liens from attaching to the leased fee interest when improvements are being constructed by a lessee. The lessor does this by filing and posting a non-responsibility notice which gives laborers and materialmen warning that their liens will not attach to the lessor's interest in the land. This provision in the lease is intended to give the Secretary the opportunity to post and file such notices when deemed advisable.

14. Improvements. This provision clarifies the ownership of the improvements at the termination of the lease. Generally, improvements are of value and become the property of the landowner or lessor. In some cases where it can be foreseen that an improvement will have outlived its usefulness, a requirement that it be removed may be inserted and a bond required for completion of the removal and cleanup.

15. Delivery of Premises. The lessee agrees that at the end of the lease he will return the property in good condition.

16. Unlawful Use. The lessee agrees that he will not use the leased premises for any unlawful purpose. This is one of the mandatory lease provisions.

17. Construction, Maintenance, Alteration, and Repairs. This clause should allow a lessee to repair or renovate improvements up to certain values without consent but require consent for major projects or any alteration that might change the income producing capability of the property.

18. Indemnification. Waiver of liability of lessor, the U.S. Government, officers, agents, etc., from any liability is necessary to make the lessee solely responsible for accidents, fire, or any casualty.

19. Fire and Damage Insurance. This clause requires the lessee to obtain casualty insurance to protect the improvements on the leased premises. It is also intended to control the lessee in use of proceeds of damages paid for reconstruction of damage due to fire or other damage. It also protects the encumbrancer (lender) for the amount of the loan balance. In cases where damage is too high to warrant repair and the lease term is nearly expired, the damages from fire insurance would go to pay off the loan (if any), clean up the premises, to restore it, and the balance paid to the lessee and the lessor as their interests appear. The lessee has a leasehold interest determined in part by the value of the improvement and time remaining on the lease and the lessor has the reversionary rights of possession in x-years based on the value of the improvement at the conclusion of the lease. The lessor would receive the balance of the proceeds after loans, cleanup, and lessee's interest in the improvement at the time of the loss.

20. Public Liability Insurance. This clause obligates the lessee to carry public liability insurance with specified coverages to protect himself and the lessor.

21. Rental Bond. This is worded so as to require a rental bond in the early stages of the lease, but to permit a waiver of the bond when sufficient money has been invested in improvements to adequately secure rental payments.

22. Performance Bond. Prior to commencement of any construction, a corporate surety bond, escrow deposit, or building loan agreement must be arranged in an amount equal to the value of the construction contemplated.

23. Companies Bonding and Insurance. The purpose of this clause is to set minimum standards for the institutions that underwrite the insurance and bonds obtained to satisfy the requirements of the lease.

24. Sublease, Assignment, Transfer. No sublease, assignment, or transfer of the lease is to be made without approval. The exceptions are subleases of lots, apartment units, or office quarters which are

repetitive. In those cases the lessee obtains approval of a sublease form and a schedule of sublease rentals which are used in making all subleases that are not individually approved. Handout V-A has three alternate supplements to be added to the basic lease clause to cover situations involving subleases of office space, dwelling units, and residential sites, respectively.

25. Status of Subleases. This provision, which preserves the sublease in case the master lease is terminated, is necessary where substantial improvements are to be made by sublessees, such as where lots are subleased and improved by the sublessees.

26. Leasehold Encumbrance. For full development of leased land and to reach the highest income potential, the lessee is usually forced to obtain financing through a mortgage or deed of trust. The leasehold interest is the security for such loans and the mortgage will describe "a leasehold interest in and to the _____ description _____." The lender will want all the freedom allowable to enable him to recover the leasehold should foreclosure occur. The regulations 25 CFR 162.12(c) authorize encumbrance only for development and improvement of the leased premises. They further allow the lender the right to assign the lease if it is acquired through foreclosure. A change in the new regulations will authorize an encumbrance to be made to refinance a loan for equity position or for resale to a new tenant. Present regulations do not allow a leasehold encumbrance to be made for refinancing or resale purposes and an exception is required on each such case in which this is needed.

27. Lessor Paying Claims. The lessor is given the option to pay liens or charges payable by lessee which would adversely affect the lease and to recover such payments from the lessee.

28. Inspection of the Premises. The lessor and the Secretary have the right to go on the leased property at any reasonable time for inspection purposes.

29. Default. This clause spells out detailed procedures to be followed in case of a default by the lessee. Before the provisions of the default clause can be implemented, it is necessary to comply with the show cause requirements of 25 CFR 162.14. If the lease provisions and the regulations are in conflict, the provisions of the regulations prevail.

30. Holding Over. The lessee cannot acquire any additional rights to the premises by staying there after the lease terminates. Also, he must remove his property within 60 days or be subject to penalties.

31. Attorney's Fees. In suits brought to enforce the provisions of the lease, the loser pays the attorney's fees.

32. No Partnership; Operation of Business. Even though rentals are based in part on percentages of income the lessor and the lessee are not partners. Also, lessee agrees that businesses on the leased premises will be operated on normal business days so as to produce the maximum income.

33. Lessee's Obligations. This is another of the mandatory provisions. Its purpose is to enable the Secretary to have legal standing to enforce the provisions of the lease, even on a unilateral basis.

34. Payments and Notices. This clause spells out the procedures for serving notices under the lease.

35. Eminent Domain. In case all or part of the leased premises are condemned under the power of eminent domain, the parties share the award in the same proportion that their respective interests in the property exist. This clause also protects the interest of any lender in the improvements in case of the condemnation.

36. Lease Binding. The terms and conditions of the lease are binding on the heirs, successors, etc. of the parties.

37. Interest of Members of Congress. This says that no Member of Congress can share in or benefit from the lease.

38. Validity. The lease is not valid until it has been approved by the Secretary.

39. Lessor's Determinations, Consents, or Approvals. This provision is included in contemplation of a change in the regulations. It deals with situations where the leased premises are in fractional ownership by a substantial number of owners making required consents and approvals under the lease difficult or impractical to obtain. This provision allows the owners of the majority interests to act on behalf of all owners.

40. Termination of Federal Trust. A mandatory provision which says nothing in the lease can delay or prevent a termination of the Federal trust and providing for notice to the parties if termination takes place.

41. Arbitration. An arbitration clause is included in the Handout because parties frequently insist on it being included in development leases; however, you should avoid putting this clause in leases when you can. The Secretary cannot legally be bound by the decisions of arbitrators and any decision he makes with respect to the lease, or an arbitration award, is subject to administrative appeals. Requiring arbitration merely complicates this procedure and adds unnecessary delays to the resolution of disputes which arise under the lease.

42. Agreements for Utility Lines and Streets. This clause gives the lessee the right to enter into agreements to obtain utility services and access for the various parts of the leased premises. The agreements cannot extend beyond the term of the lease or cover land outside the premises. If perpetual rights-of-way are needed, they should be acquired by the appropriate entity under the right-of-way regulations.

43. Tax Immunity. This clause states that nothing in the lease is intended to waive the tax immunity enjoyed by trust land.

44. Force Majeure. This provision extends the time limit for accomplishing various acts required by the lease when the lessee is prevented from complying because of forces beyond his control, such as war, riots, strikes, or acts of God.

45. Affidavit of Lessee. The lessee avers that he is acting on his own behalf and not as a front for other, perhaps undesirable, persons or groups.

46. Corporate Acknowledgements. Should be used when the lessee is a corporation. If the lessee is an individual or partnership, an appropriate acknowledgement should be inserted in lieu of this.

47. Affidavit of Lessor. This is supposed to assure that the lessor fully understands the lease.

Completing an Agricultural Lease.

From the information given below and using handouts furnished during Session Three as guidelines, prepare an agricultural development lease.

1. The lease covers 60 acres of contiguous land for which you are to devise a description.

2. Forty-one acres of the described area is classed as irrigable land and the O & M charges are $8.75 per acre.

3. The rental which has been negotiated is ten dollars an acre for the non-irrigable portion of the tract and forty dollars per acre for the irrigable part.

4. The rental is to be paid direct to John Red Fox and Mary White Crow who each have an undivided one-half interest in the land.

5. The lessee is to replace all fencing surrounding the property.

6. All irrigation ditches need to be concrete lined at an estimated cost of $6,000.

7. Fields need to be releveled at a cost of $50 per acre.

8. A grain storage bin will be placed on the property for the term of the lease, but remains the property of the lessee.

9. You are to determine the term of the lease which is justified.

Quiz - Session Five
Drafting Development Leases

True/False

T F 1. When a lessee obtains a twenty-five year lease with one option to renew for another twenty-five year term, it is not unusual for him to exercise the option as soon as the lease is approved, thereby giving him a 50 year lease.

T F 2. Percentage rental income accruing to the lessor under a development lease should be based on net, not gross, income.

T F 3. When a lessee wishes to utilize the leased premises for a use other than that specified in the lease, he will have to negotiate an amendment to the lease.

T F 4. No sublease, assignment, or transfer of a lease is to be made without the approval of the Secretary of his authorized representative.

T F 5. A leasehold may be encumbered for almost any purpose.

Completion

1. The decision of an arbitration board _____ legally bind the Secretary as any decision he might make is subject to administrative _____. Therefore, inclusion of an arbitration clause in a development lease ____ ____ recommended.

2. The date the lease is "made and entered into" is the date the _____ party signs the lease.

3. When the lessee is other than an individual, copies of _____ _____ (such as articles of incorporation, evidence of authority to act, etc.) should be required of the lessee.

4. The type of rental clause that should be used in a developmental lease for a single business site, such as a gasoline station, would guarantee a _____ annual rental against a percentage of _____ _____.

5. When a development lease rental is not based primarily on a percentage of the income produced by the land, the lease must provide for _____ reviews of the _____ involved.

6. In adjusting rental rates, both cost-of-living increases and reappraisals are used. The former tends to protect the _____

_____ of the agreed upon rental, but does not bear a relationship to the _____ _____ covered by the lease as will a reappraisal.

7. The lessee of a development lease should bear the applicable taxes and utility charges as well as keeping the leased premises free of liens; when the lessor has no responsibility for such payments, he is said to have a _____ lease.

8. Penalties for lessee's failure to complete development in a timely manner should be included in a development lease since the lease may not be _____ after improvements have begun.

9. In case of default by a lessee, a 10 day _____ _____ _____ is required to be served upon him by the provisions of 25 CFR 162.14.

10. The provision in a development lease which temporarily excuses lessee performance in case of acts of God (war, riots, floods, etc.) is known as _____ _____.

Handouts - Session One

VALUATION OF LEASED FEE

As stated in the text, the value of the leased fee is determined by calculating the present value of the right to receive the rent for the term of the lease, plus the present value of the reversion, plus the present value of any other lease benefits.

Assume a 10-acre parcel with a present fair market value of $1,000 per acre or a total value of $10,000. Also assume that we have a lease for 10 years at $80 per acre per year rental, or a total rental of $800, payable at the end of each year. If an appropriate discount rate is 8%, we can determine the factor for the present worth of $1 per annum for 10 years, which is 6.710, by consulting Table I-3 attached. (Similar tables are available for other discount rates.)

Multiplying the annual rental of $800 by the 10 year factor for $1 per year gives us $5,368 which is the present value of the right to receive the rent for the term of the lease.

The value of the reversion can be determined by the using Table I-4, which gives us the present value of $1 received at teh end of the period, again assuming an 8% discount rate and a reversion at the end of 10 years. The appropriate factor is .463. Multiplying the value of the land, $10,000, by the present worth factor for $1 to be received at teh end of ten years, gives us $4,630. (Assume that the other lease benefits have no measurable values.)

Thus, the leased fee has a value of $5,368 plus $4,630, or $9,998.

If in our example the annual rents were paid in advance, the leased fee would be valued as follows:

First years rent	$ 800.00
Present worth of $800 per year for 9 years ($800 x 6.246)	$ 4,996.80
Present value of reversion ($10,000 x .463)	$ 4,630.00
Value of leased fee	$10,426.80

The last example represents a favorable lease arrangement for hte lessor since the value of the leased fee ($10,426.80) exceeds the fair market value of the land ($10,000).

VALUATION OF LEASEHOLD INTEREST

In the text, we learned that the value of the leasehold interest can be determined by capitalizing the difference between the contract rent and the market rent for the remaining term of the lease.

Assume that we obtain a ten year lease on ten acres of land having a market value of $10,000 ($1,000 per acre) and agree to pay a rent of $800 per year ($80 per acre per year). If we assume that $800 per year is fair market rent, the leasehold interest has only a nominal value because the market rent less the contract rent is zero.

Next, assume that we lease 10 acres of land worht $1,000 per acre for $80 per acre per year for a term of ten years. Suppose at the end of the fifth lease year the value of the land has doubled to $2,000 per acre and the market rent has similarly increased to $160 per acre. At that point, the contract rent is $800 ($800 x 10 acres) per year and the market rent is $1,600 ($160 x 10 acres) per year or a difference of $800 per year. If we assume a capitalization rate of 8%, we can find the factor for the five remaining years of the lease on Table I-3, which is 3,992. When we multiply $800 (the difference between contract and market rents) by 3,992, we get $3,193.76 which is the value of the leasehold interest at the end of the fifth year of the lease.

As a final example, assume that we lease 10 acres of unimproved land having a value of $500 per acre ($5,000 total value) for a term of ten years, at a rent of $400 per year (8% of $5,000). Also assume that we invest $400 per acre ($4,000 on ten acres) to improve the land. Finally, assume that the ten acres of improved land has a market value of $10,000 ($1,000 per acre) and a fair annual rental value of $800 per year (8% of $10,000). This gives us a market value of $800 per year and a contract rent of $400 per year for a difference of $400 per year, which is a benefit we will realize for each of the ten years during the lease. Again consulting Table I-3, we find a ten year present worth factor of 6.710 (assuming an 8% capitalization rate). Thus the present value of the leasehold estate is $400 (difference between contract and market rent) times 6.710 (ten year present worth factor for $1 per year income stream) or $2,684.

We would not consider this a favorabel lease arrangement for the lessee because in order to create the leasehold value of $2,684, we had to invest $4,000 in land improvements. In order to make this an acceptable lease, either the lease term would have to be extended or the contract rent would have to be reduced, or both.

HANDOUT ONE - A

TABLE I

EIGHT PERCENT DISCOUNT RATE

Year	Present Worth of One Dollar Per Annum
1	.925
2	1.783
3	2.577
4	3.312
5	3.992
6	4.622
7	5.206
8	5.746
9	6.246
10	6.710
11	7.138
12	7.536
13	7.903
14	8.244
15	8.559
16	8.851
17	9.121
18	9.371
19	9.603
20	9.818
25	10.674
30	11.257
40	11.924
50	12.233
60	12.376
70	12.442
80	12.473
90	12.487
99	12.493

HANDOUT ONE - A

TABLE II

EIGHT PERCENT DISCOUNT RATE

Year	Present Worth of $1.00 Received at the End of the Period
1	.925
2	.857
3	.793
4	.735
5	.680
6	.630
7	.583
8	.540
9	.500
10	.463
11	.428
12	.397
13	.367
14	.340
15	.315
16	.291
17	.270
18	.250
19	.231
20	.214
25	.146
30	.099
40	.046
50	.021
60	.009
70	.004
80	.002
90	.000
99	.000

Handouts - Session Two

PART 162—LEASING AND PERMITTING

Sec.

162.1 Definitions.
162.2 Grants of leases by Secretary.
162.3 Grants of leases by owners or their representatives.
162.4 Use of land of minors.
162.5 Special requirements and provisions.
162.6 Negotiation of leases.
162.7 Advertisement.
162.8 Duration of leases.
162.9 Ownership of improvements.
162.10 Unitization for leasing.
162.11 Conservation and land use requirement.
162.12 Subleases and assignments.
162.13 Payment of fees and drainage and irrigation charges.
162.14 Violation of lease.
162.15 Crow Reservation.
162.16 Fort Belknap Reservation.
162.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.
162.18 Colorado River Reservation.
162.19 Grazing units excepted.
162.20 San Xavier and Salt River Pima-Maricopa Reservations.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

SOURCE: 26 FR 10966, Nov. 23, 1961, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 162.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the tribe must join with the assignee in the grant of a lease.

(d) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which are not immediately needed for the purposes for which they were acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(e) "Permit" means a privilege revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose. The terms "lease", "lessor", and "lessee", when used in this part include, when applicable, "permit", "permitter", and "permittee", respectively.

§ 162.2 Grants of leases by Secretary.

(a) The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the undetermined heirs of a decedent's estate; (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

§ 162.3 Grants of leases by owners or their representatives.

The following may grant leases: (1) Adults, other than those non compos mentis, (2) adults other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative, (3) the guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability, (4) tribes or tribal corporations acting through their appropriate officials.

§ 162.4 Use of land of minors.

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

§ 162.5 Special requirements and provisions.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the Federal, State or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration. For purposes of this section, "immediate family" is defined as the Indian's spouse, brothers, sisters, lineal ancestors, or descendants.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of Federal, State, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian

Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 162.6 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.3.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.3, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.2(a) (1), (2), (3), and (5).

(c) Where the Secretary may grant leases under § 162.2 he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 162.7 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.2 the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 162.8 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 162.5(b) (1) and (2), unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz.; N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif., as stated in § 162.18; which leases may be made for terms of not to exceed 99 years.

(b) Leases may be made for 25 years for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops. To determine whether a long term lease is justified, it is necessary to give consideration to the nature of the crop to be grown, including the feasibility of growing the proposed crop. The amount or substantially of the investment, as well as the necessity of such an investment in order to grow the proposed crop, are also elements to consider in evaluating the term of the proposed lease.

(c) Farming leases not granted for the purpose of growing specialized crops shall not exceed five years for dry-farming land or ten years for irrigable land.

(d) Grazing leases which require substantial development or improvement of the land shall not exceed ten years.

(e) Leases granted by the Secretary pursuant to § 162.2(a)(3) shall be for a term of not to exceed two years except as otherwise provided in § 162.6(b).

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964; 34 FR 3686, Mar. 1, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.9 Ownership of improvements.

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 162.10 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 162.11 Conservation and land use requirement.

Farming and grazing operations conducted under leases granted or approved under this part shall be conducted in accordance with recognized principles of good practice and prudent management. Land use stipulations or conservation plans necessary to define such use shall be incorporated in and made a part of the lease.

§ 162.12 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.13 Payment of fees and drainage and irrigation charges.

(a) Except as provided in Part 174 of this chapter, any lease covering lands

within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) Unless otherwise provided in this part or by the Secretary, fees based upon the annual rental payable under the lease shall be collected on each lease, sublease, assignment, transfer, renewal, extension, modification, or other instrument issued in connection with the leasing or permitting of restricted lands under the regulations in this part.

(1) Except where all or any part of the expenses of the work are paid from tribal funds, in which event an additional or alternate schedule of fees may be established subject to the approval of the Secretary, the fee to be paid shall be as follows:

Rental Percent
On the first $500 3
On the next $4,500 2
On all rental above $5,000 1

In no event shall the fee be less than $2.00 nor exceed $250.

(2) In the case of percentage rental leases, the fee shall be calculated on the basis of the guaranteed minimum rental. Where rental consists of a stated annual cash rental in addition to a percentage rental, the estimated revenue anticipated from the percentage rental shall be mutually agreed upon solely for the purpose of fixing the fee. The fee to be collected in case of crop-share or other special consideration leases or permits shall be based on an estimate of the cash rental value of the acreage, or the estimated value of the lessor's share of the crops. No fees so collected shall be refunded.

§ 162.14 Violation of lease.

Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be cancelled. The surety or sureties shall be sent a copy of each such notice. If within the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. If the lessee fails within such reasonable time to correct the breach or to furnish satisfactory reasons why the lease should not be cancelled, the lessee shall forthwith be notified in writing of the cancellation of the lease and demands shall be made for payment of all obligations and for possession of the premises. The notice of cancellation shall inform the lessee of his right to appeal pursuant to Part 2 of this chapter. Where breach of contract can be satisfied by the payment of damages, the Secretary may approve the damage settlement between the parties to the lease, or where the Secretary has granted the lease, he may accept the damage settlement. With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities for the purpose of providing lands on which housing for Indians is to be constructed, may contain a provision prohibiting the cancellation or termination of the lease during the period that a loan, loan insurance, or loan guarantee is in effect without the approval of the lender or the agency of the United States which has made, insured or guaranteed the loan for the construction of housing on the leased premises.

[29 FR 2342, Feb. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.15 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this Part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the

Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this Part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition: (1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease, (2) there is, of record, a lease on the land for all or a part of the same term, (3) the lease does not contain stipulations requiring sound land utilization plans and conservation practices, or (4) there are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such per-

mits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

[29 FR 473, Jan. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.16 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

§ 162.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the country recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

§ 162.18 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415, et seq.), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this Part 162 govern leasing under the Act of August 9, 1955. Therefore, Part 162 shall also govern the leasing of lands on the Colorado River Reservation: *Provided, however,* That application of this Part 162 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; *Provided further,* That any of the described lands in California shall be subject to the provisions of this Part 162 when and if determined to be within the reservation.

[30 FR 14186, Nov. 10, 1965, as amended at 35 FR 18051, Nov. 25, 1970. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.19 Grazing units excepted.

Tribal or individually owned lands within range units established pursuant to Part 166 of this chapter, general grazing regulations, shall not be leased and permits respecting such lands shall not be issued under this part.

§ 162.20 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415).

When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in §§ 162.1 through 162.14 and in § 162.19 apply. The purpose of this § 162.20 is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations of §§ 162.1 through 162.14 and in § 162.19 shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this § 162.20.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

[33 FR 14641, Oct. 1, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

5 Leases and Permits (Nonmineral)

Table of Contents

5.1 Objective and Policy

5.2 Authority
.1 Statutory
.2 Delegated
(A) Commissioner
(B) Area Directors
(C) Superintendents

5.3 Applicability of Regulations

5 LEASES AND PERMITS (NONMINERAL)

5.1 Objective and Policy. The objective of the Bureau of Indian Affairs in approving leases or permits on trust or restricted land is to obtain for the Indian owners the maximum financial return from the land, consistent with sound land utilization principles. The granting and/or approval of leases or permits will be in accordance with the regulations in 25 CFR 131. The objective will be achieved in cooperation with the Indian owners to the extent that trusteeship obligations and responsibilities permit.

5.2 Authority.

.1 Statutory. The principal Acts of Congress governing surface leases are as follows:

Acts of February 28, 1891 (26 Stat. 795; 25 U.S.C. 397); Allotments for 3 years; tribal lands - grazing 5 years

August 15, 1894 (28 Stat. 305; 25 U.S.C. 402); Surplus tribal lands for farming - 5 years

May 31, 1900 (31 Stat. 229; 25 U.S.C. 395); Allotted land, allottee incapacited, 5 years - farming only

March 1, 1907 (34 Stat. 1034); Up to 20,000 acres for sugar beets, etc., at Fort Belknap, Montana, for 10 years

April 30, 1908 (35 Stat. 95); Irrigable allotted lands on Uintah and Uncompahgre Reservation - 10 years

April 30, 1908 (35 Stat. 97); Irrigable lands on Wind River Reservation for 20 years

June 25, 1910 (36 Stat. 856; 25 U.S.C. 403); Trust allotments - 5 years

May 18, 1916 (39 Stat. 128; 25 U.S.C. 394); Arid allotments susceptible to irrigation - 10 years

LEASES AND PERMITS (NONMINERAL)

March 3, 1921 (41 Stat. 1232; 25 U.S.C. 393);
Restricted allotments by owners, except Five Civilized Tribes - farming and grazing

June 4, 1920 (41 Stat. 751 - basic Crow Act)

May 26, 1926 (44 Stat. 658-659), as amended by

March 3, 1927 (44 Stat. 1365)
Crow Reservation - farming and grazing - 5 years, renewals limited

July 3, 1926 (44 Stat. 894; 25 U.S.C. 402a);
Unallotted irrigable lands, farming, 10 years

February 14, 1920 (41 Stat. 415), as amended by Act of

March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413);
Fees for work incidental to leases

June 18, 1934 (48 Stat. 988; 25 U.S.C. 477);
I.R.A. reservations - 10 years

February 11, 1936 (49 Stat. 1135; 25 U.S.C. 393a);
Five Civilized Tribes by 1/2 bloods or more - farming and grazing, 5 years

June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503);
Oklahoma Welfare Act reservations - 10 years

July 8, 1940 (54 Stat. 745; 25 U.S.C. 380);
Inherited allotments by Superintendents

October 9, 1940 (54 Stat. 1057; 25 U.S.C. 403a);
Fort Madison, Snohomish and Tulalip - 25 years, with renewal 25 years

June 25, 1946 (60 Stat. 308);
Crow Reservation - 5 and 10 years allotted lands

Release 54-9, 4-20-62

August 9, 1946 (60 Stat. 962; 25 U.S.C. 403b and 403c); Restricted lands in Washington for religious, educational, and other purposes -- 25 years

March 15, 1948 (62 Stat. 80); Crow Reservation -- trust lands 5 and 10 years

August 9, 1955 (69 Stat. 539), as amended by Acts of

September 21, 1959 (73 Stat. 597), June 11, 1960 (74 Stat. 199), and October 4, 1961 (75 Stat. 804); 25 U.S.C. 415, 415a, 415b, 415c, and 415d; General long-term leasing Acts

.2 Delegated. A. The Secretary has delegated to the Commissioner authority to act under 25 CFR 131 by Secretarial Order No. 2508, Sec. 13(n).

B. The Commissioner has delegated to the Area Directors authority to act under 25 CFR 131 by Bureau Order 551, Sec. 12.

C. Superintendents derive their authority by redelegations from the Area Directors except that Superintendents for the Cherokee and Seminole Agencies receive their authority from the Commissioner. Citations should include the full chain of authority and refer to the appropriate Federal Register citation.

5.3 Applicability of Regulations. The regulations in 25 CFR 131 are generally applicable to the leasing and permitting of trust or restricted lands and Government lands under the jurisdiction of the Bureau. The Secretary may waive or make exceptions to the regulations pursuant to 25 CFR 1.2. There follows an explanation of certain sections of the regulations contained in 25 CFR 131.

LEASES AND PERMITS (NONMINERAL)

§ 131.1 Definitions.

131.1(a) "Secretary" -- The regulations omit reference to the Commissioner, Area Director, and Superintendent and refer to the Secretary. The only reference to any other official of the Department is to "the official of the Bureau of Indian Affairs having jurisdiction over the leased premises" in connection with the payment of rentals.

131.1(b) "Individually owned land" -- Self-explanatory.

131.1(c) "Tribal land" -- Lands held subject to Federal restrictions against alienation include lands held by a tribe in "fee" which are affected by 25 U.S.C. 177. Wherever possible, tribal land reserved for Indian Bureau administrative purposes should be restored to full tribal jurisdiction prior to the approval of a lease. Assigned tribal land has been included in the definition of tribal land. However, a lease can grant no greater interest than that held by the lessor. Hence the requirement that the tribe join in the lease, except where the assignment grants authority to lease. Tribal land reserved for governmental purposes, other than Indian Bureau administrative purposes, is not included in the definition. Leases of such land should be submitted for consideration as an exception to the regulations, in order that necessary clearance with the interested governmental agency may be sought.

131.1(d) "Government land" -- This term includes submarginal land, title to which has not been granted to the tribes by Congress, as well as land acquired or reserved.

131.1(e) "Permit" -- Self-explanatory.

§ 131.2 Grants of leases by Secretary.

The instances where the Secretary is authorized to grant leases have been brought together into this section.

131.2(a)(1)&(2) Where the Secretary is authorized to act for persons who are non compos mentis and for orphaned minors and these persons have representatives under 131.3(2) and (3), the Secretary may either grant leases or approve leases executed by such representatives.

131.2(a)(3) The Secretary may grant leases on behalf of the undetermined heirs of a decedent's estate whether such estate includes the entire interest in a tract of land or an undivided interest therein.

131.2(a)(4) The owners of land that may be leased under this subsection shall be given notice of the date on which a lease may be entered into and of intent to lease the land pursuant to the Act of July 8, 1940 (54 Stat. 745; 25 U.S.C. 380), if a satisfactory lease is not agreed upon within 90 days from such date. Although the matter of the exercise of this authority in particular cases must be left to the judgment of the field officials, it is Bureau policy to utilize the procedures available under the 1940 Act as fully as possible.

131.2(a)(5) Adult Indian owners authorized to grant leases (131.3(1)) who desire that the Superintendent grant leases of their lands may authorize him to do so in writing. The authorities of the Secretary to grant leases under the regulations should be fully explained to such Indians and they should be counseled that the written authority they wish to give can embrace all of the authority of the Secretary under the regulation or any part thereof. Such Indians should be informed that in most instances the leases granted

under the written authority will be advertised for lease, and they may wish to limit their written authority to such leases. The acceptance of a written authority to lease is discretionary with the Superintendent. Where a written authority is submitted to the Superintendent and is not accepted it should be returned to the Indian marked "disapproved" with a letter giving the reasons for not accepting it.

131.2(b) In determining whether the authority in this subsection may be used it is not sufficient that the whereabouts of such an owner is not known to the Superintendent. There should be a reasonable inquiry as to whether those persons with whom he would ordinarily keep in contact know of his whereabouts. The record concerning leases granted under this authority should show the considerations on which the determination is made that the lease is necessary and that the terms and conditions are compatible with the protection and preservation of the property.

131.2(c) Government-owned land not immediately needed for purposes for which acquired or reserved may be permitted pending determination of future need. Such permits should be granted only where necessary to protect and preserve the property and for terms not to exceed one year. Care should be exercised not to commit such lands to a form of tenure that would interfere with disposal of the land as provided by law. The advertisement and permit issued on Government-owned land will contain a provision prohibiting the growing of price supported crops in surplus supply.

§ 131.3 Grants of Leases by Owners or Their Representatives.

131.3(1) Self-explanatory.

131.3(2) Under this authority parents may grant leases on behalf of their minor children. Also, persons standing in loco parentis of minor children may grant leases on the land of such children in cases where the children do not have a duly appointed legal representative. In some instances persons standing in loco parentis and the Secretary may have concurrent authority to execute leases (See 131.2(a)(2)). In such cases, the Superintendent must exercise judgment as to whether to approve a lease executed by the persons standing in loco parentis or to grant the lease under the cited authority.

131.3(3) As is the case under the previous section, in some instances there will be concurrent authority in representatives acting under this section and the Secretary acting under 131.2(a)(1) and (2). The same judgment factors as to whether to approve a lease executed by the representative or to grant the lease himself will have to be used by the Superintendent.

131.3(4) Self-explanatory.

§ 131.4 Use of land of Minors.

This section authorizes the person having the care and custody of minor children to use the land of such children subject to the conditions in the regulation.

§ 131.5 Special Requirements and Provisions.

131.5(a) Self-explanatory.

131.5(b) The regulations by referring to fair annual rental and by authorizing the grant or approval of leases for a consideration that is less than

the appraiser's estimate of fair annual rental more clearly point up the true nature of appraisals; that they do not determine value, but are estimates of value to help Bureau officials to decide on acceptable rentals. A lease may be granted or approved where the proposed contract rent approximates the appraiser's estimate of fair annual rental and is in the judgment of the approving officer the highest rental that may be realized in the circumstances. It will not be necessary to treat such cases as coming under 131.5(b)(3) since in effect the approving officer, using the appraiser's estimate as a guide, is considering the proposed contract rent as fair annual rental.

131.5(b)(1) Self-explanatory.

131.5(b)(2) The limitation on the class of land that can be leased to members for homesite purposes is called to attention and also the fact that under the regulation leases may be given for purposes of subsidizing the tribe as a whole.

131.5(b)(3) In those cases where it is not possible to obtain fair annual rental, a lease may be granted or approved for less than such amount. The appraiser's estimate of fair annual rental is generally based upon leasing of the land for purposes of its highest and best use for a term compatible with the maximization of income to the land. It is recognized that there will be cases where due to local conditions, economic and otherwise, the leasing of land on this basis--the highest and best use for a term compatible with maximization of income--will not be possible. Where such situations exist, leases may be granted or approved for a term compatible with proper protection and preservation of the property

best copy available

at the highest rental that may be realized. While, generally, such leases should be limited to a term of one year, a longer term may in some cases be justified. The records should contain documentation of the justification for all leases granted or approved under this regulation.

131.5(c) The regulation has been designed to provide minimum bonding requirements commensurate with adequate protection for the landowner. Experience has shown that excessive bonding requirements can work to the disadvantage of the landowner. It should be noted that the Secretary (or those acting for him under delegated authority) can provide other bonding requirements than those found in the regulations or he can waive the bonding requirements altogether. Either corporate surety bonds or individual surety bonds may be accepted or in lieu of furnishing a surety bond a lessee may deposit with the Superintendent cash or negotiable United States Treasury bonds or other negotiable treasury obligations in the appropriate amount. In the latter cases the lessee should also submit a power of attorney appointing and empowering the Secretary, in the event of any breach of the lease, to pay over any such cash, or to dispose of any such bonds and pay over the proceeds derived therefrom to or for the benefit of the landowners. In any event, the question of whether a bond is satisfactory is left to the judgment of the approving officer.

131.5(c)(1) Bonds guaranteeing rentals will not be required except in those instances where the annual rental is not paid in advance. In these cases a bond guaranteeing one year's rental should ordinarily be required. In cases involving improvement leases, where the improvements have been completed it may not be necessary to require the bond.

131.5(c)(2) Bonds covering the estimated construction cost of improvements should be released upon completion and acceptance of the improvements.

131.5(c)(3) This section applies to obligations other than the payment of rental and construction of improvements. For example, in a given instance it might be appropriate to require a bond to protect the owners against abandonment or against damage caused by misuse of the property.

131.5(d) In addition to insurance to protect the improvements and other interests of the lessor, liability insurance should be required where appropriate as a measure of protection to the Indian owners and the United States.

131.5(e) A lease is designed to grant peaceful use and possession of property from and after a specified date. Rental is considered due at the beginning of the period for which the rental is paid whether annually or at more frequent intervals. Ordinarily the rent for leased premises should be paid on the date the lessee is to take possession under the lease and annually on such date for the duration of the lease. The regulation provides that except with the approval of the Secretary (or his authorized representative), no lease shall provide for payment of rent in advance of the beginning of the use period for which such rent is paid. The practice of authorizing or requiring rental payments in advance of the period for which the rental is earned should be permitted only when it is fully justified by such circumstances as, for example, emergency needs of the landowner. Every effort should be made to reduce the instances where advance payment of rentals is authorized or required to the minimum which may be dictated by the personal needs of the Indian in each individual lease case.

131.5(f) The regulations contain no provisions regarding whether rentals are to be paid direct to the owner of the land or his representative,

or to the Secretary, except to state that an appropriate provision shall be included in the lease. The instruction given here concerning direct payment of rental is general and should not be construed as precluding a requirement in a given case that rentals be paid to the Secretary. (See requirements of 25 U.S.C. 380 re deposit of rents to account of Indians. See also 131.5(h)(2) concerning recall of direct rental payment provisions in a lease.) A lease of tribal land may provide for the direct payment of rentals when a tribe has facilities for handling its own funds, including an acceptable bonded officer to receipt for funds. Otherwise the lease should provide for the payment of rentals to the Superintendent for deposit to the credit of the tribe in the United States Treasury, except in the case of assigned tribal land in which case the lease may provide for the payment of rental to the holder of the assignment. Leases of individually owned lands may provide for the payment of rentals direct to adult Indian owners who are not non compos mentis. Certain statutes direct that the payment of rental on leases of lands owned by minors granted or approved thereunder be made direct to the parents. In most cases it is within the discretion of the Secretary as to whether rentals are paid direct to the representatives of minors who are authorized to grant leases or to the Secretary. Rental on land owned by persons who are non compos mentis or are otherwise under legal disability may be paid to the Secretary or to the person who may grant leases on their behalf.

131.5(g) It is mandatory that all leases granted or approved under this part contain these provisions.

131.5(g)(1) This provision has been included in the regulation and is required to be in all leases to assure that where rentals are paid

direct to the Indian owners, the United States has an interest in the rentals entitling it to bring suit for their recovery. (See Chisholm et al., v. House et. al., 160 F. 2d 632 (10 Circuit 1947)).

131.5(g)(2) Self-explanatory.

131.5(g)(3) Self-explanatory.

131.5(h) It is mandatory that all leases of individually owned land that provide for direct payment of rental contain these provisions.

131.5(h)(1) Self-explanatory.

131.5(h)(2) Where the authority in this regulation is invoked the records should contain documentation of the justification for the action.

§ 131.6 Negotiation of leases.

131.6(a) In cases where all of the owners are adults, authorized under 131.3 to negotiate their own leases, who have negotiated leases in which the proposed rental is not satisfactory to the Secretary, the land may be advertised for lease. Since the Secretary has no authority to grant a lease on land of an adult Indian (except those who are non compos mentis and those whose whereabouts are unknown) the advertisement should state that the award will be made to the highest acceptable bidder subject to the acceptance by the owners. When a lease has been negotiated by adult owners, and by representatives of other owners for whom the Secretary may grant leases, and the rental is not satisfactory to the Secretary, he may advertise the land for lease. If an acceptable bid is received the Secretary may grant the lease on behalf of all the owners.

131.6(b) This section should be read with § 131.3 which is referred to therein. Where the owners who may grant their own leases under § 131.3 represent the majority interest, and these owners

have negotiated a lease satisfactory to the Secretary, he may join in the execution of the lease for those persons whom he may represent under § 131.2(a)(1), (2), (3), and (5). In addition to the authority to commit the interests of owners of minority interests whom he may represent under § 131.2(a)(1), (2), (3), and (5) to negotiated leases as stated above, it should be noted that under § 131.6(c) the Secretary may also negotiate leases on behalf of those owners for whom he has authority to grant leases under § 131.2 when he is satisfied that in so doing fair annual rental can be obtained. When a lease that has been negotiated by the owners of a majority interest pursuant to this section is not satisfactory to the approving officers the land should be advertised for lease. In such cases the Secretary may grant the lease if a satisfactory bid is received.

131.6(c) When this authority to grant leases without advertising is used the record should be documented as to the justification.

§ 131.7 Advertisement.

It should be noted that the Secretary can grant leases without advertising under the regulation on behalf of owners of undivided interests where he is committing their interest to a satisfactory lease negotiated by owners authorized to grant leases (131.6(b)), and when in his judgment the fair annual rental can be obtained by negotiation (131.6(c)). In all other cases where the Secretary is to grant the lease, the land should be advertised. Land may also be advertised in other instances; for example, see the discussion of § 131.6(a) and (b), above. Also, owners who are authorized to negotiate leases may wish to have their land advertised in order to explore the market. Advertisements should call for sealed bids and contain a statement as to where and how bids shall be submitted. They should also

include the date, hour, and place set for the opening of bids and state that the award will be made to the highest satisfactory bidder (subject to the approval of the owner where the Secretary does not have authority to grant the lease). The schedule of fees to be charged should be included. The lands should be advertised for lease for at least 30 days. When special conditions justify, the Superintendent may authorize advertising for a shorter period. The reasons for such shorter period should be documented for the record. The advertisement should be given as much circulation as is possible including but not limited to posting at the agency office, the local post office, trader stores, and other public buildings where they may be brought to the attention of interested parties and mailing to all prospective lessees. The advertisement shall not show the appraiser's estimate of fair annual rental nor shall it offer preference rights.

§ 131.8 Duration of leases.

The regulations provide maximum periods for which leases may be granted. The approving officer should ascertain whether a lesser term would be compatible with the maximization of income to the land. The term should not, of course, exceed the number of years provided for in the regulations. It should be noted that § 131.8(a) provides that leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years. Lending agencies or institutions which are insuring loans secured by a leasehold interest may require that the lease contract be drawn in such a manner as to make it a binding agreement for a 50-year period, and they may insist that the additional term be referred to as an "extension" rather than a "renewal." (See Illustration 1.) The regulations provide for a review of all leases which are not based primarily on percentages of income produced by the land at not less than five-year intervals. If upon such review an adjustment of rental is indicated,

such adjustment may be made by the Secretary where he has the authority to grant leases. Otherwise, the adjustment must be with the consent of the owners and the approval of the Secretary. It is not necessary that the authority of the Secretary to grant leases existed as of the date the lease was entered into if he has such authority at the time the adjustment is made.

§ 131.9 Ownership of improvements. -- Self-explanatory.

§ 131.10 Unitization for leasing. -- Self-explanatory.

§ 131.11 Conservation and land use requirement.

It should be noted that where the lease is granted by the owners, their consent to the annexation of stipulations and plans is necessary. This is required since such annexation becomes a part of the lease.

§ 131.12 Subleases and assignments.

Leases may provide for subleasing without further consent or approval pursuant to 131.12(b) in cases where the nature of the lease would require that this be permitted. For example, a lessee under a recreational development lease will probably want to sublease various operations rather than operate them himself and should be able to do so under the terms of the lease.

§ 131.13 Payment of fees and drainage and irrigation charges.

131.13(a) Provision for the payment of irrigation and drainage charges is included in Lease Form 5-180. Suitable provision should be included in other leases where appropriate.

131.13(b) The total fee to be collected will be computed from a single year's rent, i.e., new leases, first year's rent; subleases, assignments, etc., current year's rent in which made. It should be noted that the Secretary may waive the payment of fees. Where a modification of the lease is primarily for the benefit

of the Indian and no increase in rental is involved, the fee should be waived. The fees collected shall be deposited to the credit of the United States as general fund receipts except where all or any part of the expenses of the work are paid from tribal funds. In the latter cases an additional or alternate schedule of fees may be established subject to the approval of the Secretary and all or any part of the fee as may be deemed appropriate may be credited to the tribal funds from which the expenses are paid.

§ 131.14 Violation of leases.

Indians who grant their own leases should assume initial responsibility for assuring compliance with the terms of the lease and reporting any violation to the Superintendent. The Superintendent, however, has the basic responsibility for, and shall enforce, compliance with the terms of leases granted or approved by the Secretary. The procedure set out in 131.14 should be observed. Any appeal taken from administrative action should be required to be made in accordance with 25 CFR 2. It should be noted that under 25 CFR 2.10(b) an appeal bond may be required. Such a bond shall be required where the performance of the obligations under the lease was assured by a surety bond which by its own terms would cease upon termination of the lease for any cause. The appeal bond should protect the lessor from any loss of revenue or damage occasioned by the pendency of the appeal.

Summary of Standard Forms - Surface Leasing

FORM NUMBER	TITLE
5-5441	Lease (Farming and Grazing or Farm Pasture)
5-5442	Cancellation (Lease)
5-5443	Modification (Lease)
5-5444	Assignment of Agricultural or Business Lease
5-5445	Business Lease
5-5448	Lease (Housing)
5-5460	Lease (Low-rent housing and public housing)
5-5461	Residential Lease (VA and FHA)

Handouts - Session Three

Form 5-5141

Handout III-A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

LEASE

Allotment No. .....

Lease No. .....

..... Indian Agency Contract No. .....

THIS CONTRACT, made and entered into this ..... day of ....., 19....., by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the "lessor," and .....
..... of .....,
hereinafter called the "lessee," in accordance with the provisions of existing law and the regulations (25 CFR 131) which, by reference, are made a part hereof, WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee the land and premises described as follows, to wit:

containing ..... acres, more or less, of which not to exceed ..... acres may be cultivated, for the term of ..... years, beginning on the first day of ....., 19....., fully to be completed and ended on the ..... day of ....., 19....., subject to the conditions hereinafter set forth. The lessee, in consideration of the foregoing, covenants and agrees, as rental for the land and premises, to pay $..... (one ..... share of all crops as hereinafter provided) per annum:

TO—	DATE DUE	AMOUNT
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

In the event of the death of any of the owners to whom, under the terms of this lease, rentals are to be paid direct, all rentals remaining due and payable shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises. This provision is applicable only while the leased premises are in trust or restricted status.

While the leased premises are in trust or restricted status, the Secretary may in his discretion, and upon notice to the lessee, suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

This lease is subject to the following provisions:

1. "SECRETARY" as used herein means the Secretary of the Interior or his authorized representative.

2. INTEREST.—It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest at the rate of 6 percent per annum will become due and payable from the date such rental became due and will run until said rental is paid.

3. OPERATION AND MAINTENANCE ASSESSMENTS.—It is understood and agreed that the lessee will pay all operation and maintenance assessments annually in advance on the due date preceding each irrigation season, including any penalties accruing against the above-described land under irrigation, and will pay all charges assessed in connection with any other improvement project or district within which the lands may be located, pursuant to the existing or future orders or regulations of the Secretary.

4. REPAIRS.—It is understood and agreed that the lessee is to keep the premises covered by this lease in good repair, and the said lessee will be responsible for all damages done to buildings and fences and other improvements, except the usual wear and decay.

5. CROP LEASES.—It is understood and agreed that the lessee will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, without prior approval of the Secretary.

6. SUBLEASES AND ASSIGNMENTS.—Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of all parties to this lease, including the surety or sureties.

7. RESERVATIONS.—It is understood and agreed that the lessor reserves the right to make oil and gas leases, grant rights of way and other legal grants, on the premises covered by this lease and that in event such a lease or grant is made, the lessee hereunder shall be entitled to damages for the actual loss sustained by him on account of said lease or grant, and to nothing more. It is further understood that in the event of a dispute between the lessee hereunder and the lessee or permittee under any oil and gas lease, right-of-way, or other grant, as to the amount of such actual damages the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of the said damages.

8. UNLAWFUL CONDUCT.—The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

9. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.—Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified by the Secretary of any such change in the status of the land.

10. IMPROVEMENTS.—Unless otherwise provided herein it is understood and agreed that any buildings or other improvements placed upon the said land by the lessee become the property of the lessor upon termination or expiration of this lease.

11. VIOLATIONS OF LEASE.—It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations in 25 CFR 131.

12. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.—No assent, express or implied, to any breach of any of the lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

13. UPON WHOM BINDING.—It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, executors, and administrators of the parties to this lease. While the leased premises are in trust or restricted status, all the lessee's obligations under this lease, and the obligations of its sureties, are to the United States as well as to the owner of the land.

14. INTEREST OF MEMBER OF CONGRESS.—No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract, if made with a corporation or company for its general benefit.

15. ADDITIONS.—Prior to execution of this lease, provision(s) number(s) ..... has (have) been added hereto and by reference is (are) made a part hereof.

16. APPROVAL.—It is understood and agreed that this lease shall be valid and binding only after approval by the secretary.

IN WITNESS WHEREOF, the lessee (and lessor) has (have) hereunto affixed his (their) hand(s) and seal(s), the day and year first above written (and the lessor hereunto has caused to be attached his legal acceptance on which he has affixed his hand an seal).

Two witnesses to each signature:

.....

P.O. ....
Lessee.

.....

P.O. ....
Lessee.

.....

P.O. ....
Lessor.

.....

P.O. ....
Lessor.

.....

P.O. ....
Lessor.

.....

P.O. ....
Lessor.

.....

P.O. ....
Lessor.

.....

P.O. ....
Lessor.

III-A-3

Approved ..... **, 19**..... .....
Approving Official.

☆ U.S. GOVERNMENT PRINTING OFFICE : 1982—O-529112

Leasing[Agricultural or Grazing]

1. Submit list of land to SMCO & Range for farm plans and lease stipulation.

2. Issue 90 day notice to lessors on lease contracts that are expiring.

3. Receive applications to lease - signed by lessee and at leas t one lessor.

   a. Route application to Social Services, Credit and Range Management for comments (will vary).
   b. Submit applications to Superintendent for approval.
   c. Prepare contracts for approved lease applications and notices to lessees and lessors for those disapproved and reasons therefore.
   d. Contracts received from lessee for approval
      (1) Review for bonding and adequacy of signatures of lessors and lessee.

   e. Submit to Superintendent for approval.
   f. Record lease number when approved in log.
   g. Post to lessee and lessor cards.
   h. Prepare lease file.

4. Prepare Lease Advertisement.

   a. Mail and post advertisement.
   b. Have bid opening and prepare bid abstract.
   c. Prepare lease contracts for successful bidder and mail.
   d. Return money to unsuccessful bidders.
   e. Contracts received for approval.
   f. Review for bond and a lequacy of signature of lessees.
   g. Submit to tribe for signature those contracts on tribal land.
   h. Superintendent approval.
   i. Record lease number.
   j. Post to lessee and lessor cards - plat books.
   k. Prepare journal voucher distributing lease rental.
   l. Prepare lease file.

LEASING CHECK-LIST

FINAL REVIEW OF DOCUMENT(S) PRIOR TO APPROVAL

Identification number(s) of land:_____

( ) LEASE/PERMIT

( ) HAY PERMIT MODIFICATION ( ) ASSIGNMENT OR TRANSFER OF LEASE

( ) SAND OR GRAVEL PERMIT ( ) SUB-LEASE

( ) RIGHT-OF-WAY PERMIT ( ) OTHER:_____

		YES	NO
1.	All forms dated and properly completed.	( )	( )
2.	All forms properly notarized where required.	( )	( )
3.	Properly completed surety bond.	( )	( )
4.	Ownership information on document shows living heirs and unprobated estates with their identification numbers and their fractional share in the land as well as rental or other proceeds.	( )	( )
5.	Fees and taxes paid. Receipt No._____	( )	( )
6.	Signatures of all parties to documents, including witnesses.	( )	( )
7.	Revisions or changes made on documents, including witnesses.	( )	( )
8.	Proper CFR and other citations shown where Superintendent is to sign.	( )	( )
9.	Appraisal on file.	( )	( )
10.	Adequate rental.	( )	( )

DATE:_____ _____
LEGAL CLERK, TEN. & MGMT. SECTION

DATE:_____ _____
SECTION CHIEF, TEN. & MGMT. SECTION

REMARKS:_____

Form 5-[illegible]
5-[illegible]
Jan. 1962
(Rev. AAO-70)

Handout III-B

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

ALLOTMENT NO. .....

..... INDIAN AGENCY

ALLOTTEE .....

CONTRACT NO. .....

FARMING AND GRAZING LEASE

THIS CONTRACT, made and entered into this ..... of ....., 19....., by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the "lessor," and ..... of ....., hereinafter called the "lessee," in accordance with the provisions of existing law and the regulations (25 CFR [illegible]) which, by reference, are made a part hereof, WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee for dry land farming and grazing purposes only, the land and premises described as follows, to wit:

containing ..... acres, more or less, of which not to exceed ..... acres may be cultivated, for the term of ..... years, beginning on the first day of ....., 19....., fully to be completed and ended on the ..... day of ....., 19....., subject to the conditions hereinafter set forth. The lessee, in consideration of the foregoing, covenants and agrees to pay the following annual rental for the land and premises: (Annual rental, due dates or lessor's share of crops and any expenses to be borne by lessor are to be specified in full)

TO:	Acct. No.	Lessor	Interest	Amount	Payable

(continued on page 4)

In the event of the death of any of the owners to whom, under the terms of this lease, rentals are to be paid direct, all rentals remaining due and payable shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises. This provision is applicable only while the leased premises are in trust or restricted status.

While the leased premises are in trust or restricted status, the Secretary may in his discretion, and upon notice to the lessee, suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

This lease is subject to the following provisions:

1. "SECRETARY" as used herein means the Secretary of the Interior or his authorized representative acting under delegated powers.

2. INTEREST.—It is understood and agreed between the parties hereto that in the event that any installment of rental is not paid within 10 days after becoming due, interest at the rate of 10 percent per annum upon the such delinquent installment of rental will become due and payable from and after the date such rental became due until paid.

3. CARE OF PREMISES.—It is understood and agreed that the lessee is to keep the premises covered by this lease in good repair. He shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvement thereon, but shall keep the same in good repair. He shall not destroy or permit to be destroyed any trees, except with the consent of the lessor and the approval of the Secretary, and shall not permit the premises to become unsightly. The lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.

4. CROP LEASES.—It is understood and agreed that the lessee will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, without prior approval of the Secretary.

5. SUBLEASES AND ASSIGNMENTS.—Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of the lessor and lessee.

6. RESERVATIONS.—It is understood and agreed that the lessor reserves the right to make mineral, business, signboard, industrial, and sand and gravel leases and/or permits, and to grant rights-of-way and other legal grants on the premises covered by this lease, and that in event such a lease or grant is made, the lessee hereunder shall be entitled to damages for the actual loss sustained by him on account of said lease or grant, and to nothing more. It is further understood that in the event of a dispute between the lessee hereunder and the lessee, grantee or permittee under any mineral, business, signboard, industrial, or sand and gravel permit or lease or right-of-way and other grant, as to the amount of such actual damages the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of the said damages.

7. UNLAWFUL CONDUCT.—The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

8. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.—Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified by the Secretary of any such change in the status of the land.

9. IMPROVEMENTS.—Unless otherwise specifically provided herein it is understood and agreed that any buildings or other improvements placed upon the said land by the lessee become the property of the lessor upon termination or expiration of this lease.

10. VIOLATIONS OF LEASE.—It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations of the Secretary as stated in 25 CFR 131.

11. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.—No assent, express or implied, to the breach of any of the lessee's covenants shall be deemed to be a waiver of any succeeding breach of covenants.

12. UPON WHOM BINDING.—It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, executors, and administrators of the parties to this lease. While the leased premises are in trust or restricted status all the lessee's obligations under this lease, and the obligation of its sureties, are to the United States, as well as to the owner or owners of the land.

13. INTEREST OF MEMBER OF CONGRESS.—No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

14. BOND.—The lessee shall furnish such bond as may be required by the Secretary, with satisfactory surety to guarantee compliance with the terms of this lease.

15. ADDITIONS.—Prior to execution of this lease, provision(s) number(s) ..... has (have) been added hereto and by reference is (are) made a part hereof.

16. APPROVAL.—It is understood and agreed that this lease shall be valid and binding only after approval by the Secretary

:N WITNESS WHEREOF, the lessee (and lessor) has (have) hereunto affixed his (their) hand(s) and seal(s), the day and year first above written (and the lessor hereunto has caused to be attached his legal acceptance on which he has affixed his hand and seal).

Two witnesses to each signature:

Lessee

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

Lessor

(Schedule of payment continued from page 1)

Asst. No.	Lessor	Interest	Amount Payable

Approved ....., 19 .....

.....
Approving Official

INTERIOR, HARRELL PRESS, 7-70-100-100

AAO-76

ADDITIONAL LEASE REQUIREMENTS (Rev. 1976)

Term of Lease ..... to ..... Allot. No. ..... Lease No. .....

Land Description .....

.....

The following conditions or stipulations are understood and agreed to by the parties and are hereby incorporated into and made a part of the lease contract numbered above. Upon failure of the lessee to comply with any provisions of this lease, the approving officer may, in addition to collecting payment of specified damages, render the lease subject to cancellation. Where damages are not specified the amount shall be twice the cost of remedial measures as determined by the approving officer. Any written special stipulation for a particular lease will take priority over any provision in the printed form which may be considered contradictory to such stipulation.

A. ENTRY ON PREMISES: The approving officer or his representative or the lessor may enter upon the premises covered by this lease at such reasonable time as may be desired for inspection or for the purpose of exercising any of the rights reserved under the lease. Whenever locks are placed on gates, keys must be furnished the local SMC office.

B. BUILDINGS AND IMPROVEMENTS:

1. All houses designed for living quarters or residences on the premises are reserved by the lessor. All unoccupied houses shall be fenced and protected from livestock damage. No mobile homes shall be placed on the premises.

2. The lessee agrees to file an insurance policy made payable to the Bureau of Indian Affairs, covering all leased building in the full amount of the insurable value with the proceeds to be paid to the Bureau of Indian Affairs for the benefit of the lessor(s). In the event a building is not insurable, a statement signed by a reputable insurance agent evidencing same and the reasons therefor must be filed with the approving officer within 30 days of the effective date of this lease.

3. All improvements, including fences, existing on these premises, or which may be placed thereon during the term of this lease, excepting electric fences, shall be maintained and remain on the premises. (Any reserved right of the lessee to remove specified fences, including gates, or other improvements expires at the termination of the lease.)

C. RESERVED RIGHTS:

1. The lessor(s) reserves to himself the right to gather all native nuts and fruits, and the right to engage in lawful hunting and fishing provided that such activities do not interfere with the normal farming and grazing operations.

2. The lessor(s) reserves the right to all water except that required by the lessee for livestock and domestic purposes.

3. Timber and timber products are reserved by the lessor.

4. Cemeteries or Burial plots on the leased premises shall not be cultivated or grazed.

D. CROP SHARE LEASE: Planted crops shall not be pastured under a crop share lease nor the cropland of such a lease be diverted from production under federal production control programs.

E. U.S. DEPARTMENT OF AGRICULTURE PROGRAMS:

1. Protect and maintain full crop allotments. The land covered by this lease shall not be placed in combination with another farm or farms for the purpose of combining allotted crops. Exceptions to the foregoing must be authorized by the approving officer. (Damages for the loss of crop allotments through willful action or negligence by the lessee shall be $500.00 per acre for peanuts and $100.00 per acre for cotton and wheat.)

2. Where the approving officer determines that participation in Department of Agriculture programs appears to be in the best interest of the land owner(s), and where requested to do so by the lessee, he may execute the necessary USDA documents on behalf of the lessor(s) to permit participation by the lessee.

F. SURRENDER CLAUSE:

1. It is understood and agreed that in the last year of this lease, the lessee will surrender to the lessor(s), succeeding lessee, or purchaser, together with right of ingress and egress: (a) All small grain stubble land immediately after harvest (small grain crops pastured after April 1, will be considered harvested and the land surrendered no later than July 1); (b) Adequate additional cropland, if stubble land is insufficient, no later than November 1, to permit the seeding of the full wheat allotment. It shall be the responsibility of both the outgoing and succeeding lessees to confine their respective operations and livestock to only that portion of the tract to which they hold possession and in no case shall either interfere with the operations of the other.

2. In the event that the leased lands or any part thereof, are included within a defined taking area for public purposes by an acquiring agency having the right of eminent domain, it is agreed that the said premises included within the taking area will be surrendered and the lease cancelled by the lessee upon written notice by the approving officer. Such cancellation and surrender of the premises or part thereof because of a public taking will be accomplished at the discretion of the approving officer at the end of the then current lease year on non-cultivated land or immediately after harvest of growing crops on cultivated land.

3. The lessee agrees to surrender a portion or portions of the leased premises for homesite purposes, together with access thereto, upon the approval of a properly executed modification of this lease, as may be requested by the approving officer. An appropriate adjustment of rent will be made.

G. SEISMOGRAPHIC EXPLORATION: The lessee shall not prohibit entry by any seismograph company nor be entitled to any payment except for actual damages which may be sustained resulting from such seismograph work as specified in Paragraph 6 of the basic lease contract.

H. PAYMENT OF RENT: The lessee agrees not to pay any earlier than thirty (30) days prior to due date as specified in the lease contract unless prior written authorization is granted by the approving officer. Any payments of unauthorized advance rental will not be recognized as compliance with the lease contract terms. Upon request, the lessee agrees to submit proof of payments to the approving officer, in the form of cancelled checks or receipts. Such proof of payment may cover any or all rents due and payable under terms of the lease contract.

I. SOIL CONSERVATION REQUIREMENTS:

1. When grain is harvested from small grain crops, the straw may not be baled or otherwise removed from the land. (Damages $25.00 per acre.)

2. Not more than one crop shall be produced from the same land in the same crop year unless one crop is a winter legume, sweet clover or alfalfa. If winter crops (volunteer or planted) are pastured after April 1 the land may not be established to a summer crop. (Damages $50.00 per acre.)

3. Alfalfa shall not be plowed up in the last year of this lease without written permission from the approving officer. (Damages $50.00 per acre.)

4. Native grass pastures shall not be grazed to the extent that stands of desirable grasses and forbs are depleted. The animal stocking rate shall be reduced immediately if so directed by the approving officer. Under normal climatic conditions the stocking rate shall be limited to animal units on a year-round basis. Native grass may not be mowed for hay if pastured after April 1. (Damages $15.00 per acre.)

5. Native grass may not be cut for hay between August 1 and April 1 unless permission is granted in writing by the approving officer. If any part of a native grass pasture or meadow is mowed for hay, grazing of the entire plot shall be deferred between April 1 and November 1, unless mowed areas are fenced separately. (Damages $15.00 per acre.)

6. Maintain improved pastures, including Bermuda grass and Weeping Lovegrass, in a productive and vigorous condition. Maintenance measures shall consist of weed control, renovation, fertilization and management of grazing. Graze Weeping Lovegrass so as to leave at least four (4) inches of top growth on November 1. (Damages $20.00 per acre.)

7. Grass sod shall not be removed or sold from these premises. (Damages $300.00 per acre.)

8. Contour farm all cultivated land with terraces or with established contour lines. (Damages $10.00 per acre.)

9. Maintain all terraces, waterways, dams, drainage channels and other conservation structures. Terraces will be checked for channel capacity and height. Terraces not meeting minimum SMC specifications shall be built up to specifications no later than , or as otherwise directed by SMC Conservationist. (Damages $10.00 per 100 feet.)

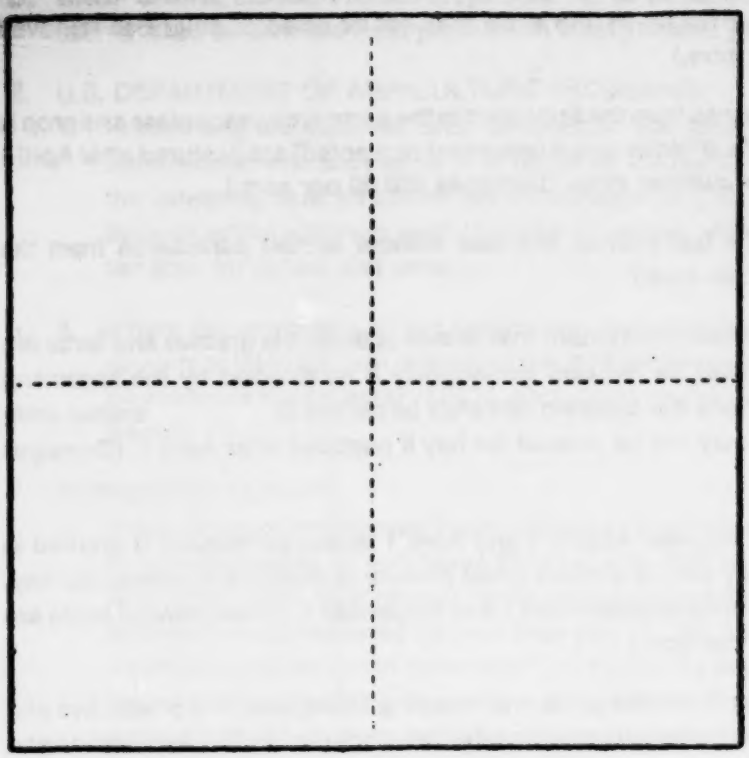
10. Control weeds in idle fields, open pastures, grass planting and waterways. (Damages $5.00 per acre or a minimum of $60.00.)

11. The burning of pastures, fence rows or crop residues is prohibited without prior written permission from the approving officer. (Damages $10.00 per acre.)

12. Control wind erosion with emergency tillage as needed or as directed by the approving officer. (Damages $10.00 per acre.)

13. Peanut crop residue is to be left on the land. At the time of peanut harvest each year, including the last year of the lease, a cover crop shall be planted on the land where peanuts are grown. (Damages $50.00 per acre.)

J. SPECIFIED PRACTICES:



Specified SMC provisions were explained and approval is recommended.

.....

Signature: SMC Representative

The above SMC provisions were explained to me this .....day of.....19 ..... and are understood and agreed thereto.

.....

Signature: Lessee

S U P P L E M E N T N O. I

LESSEE:_____ LEASE NO.:_____

TERM:_____

****

GENERAL CONDITIONS OF LEASE

1. TERM OF LEASE: The term of this lease is _____ years effective upon approval. in the event the water source for all or a portion of the leased area diminishes, with or without pumping, or some Act of God occurs to prevent cropping all or a portion of the lease area, the Lessee reserves the right to stop farming such area and to terminate this lease with respect to said area, in which case if only a partial termination, the rental shall be proportionately abated and if the entire lease shall be terminated, Lessee shall have no further liability hereunder.

2. RENTAL: The Lessee, in consideration of the foregoing, covenants and agrees to pay rental in lawful money of the United States of America, to the Lessor, payment to be made at the office of the Superintendent of the _____ Indian Agency, _____, _____, by remittance payable to "Bureau of Indian Affairs", annually, for the use and benefit of the Lessor calculated as follows:

   A. 1st Year: $ per acre
      2nd Year $ per acre
      3rd Year $ per acre
      4th Year $ per acre
      5th Year $ per acre
      6th Year $ per acre
      7th Year $ per acre
      8th Year $ per acre
      9th Year $ per acre
      10th Year $ per acre

   B. The above cited per acre rentals are the minimum rentals to be paid annually in advance on or before each succeeding anniversary date of the beginning of this lease for each lease year indicated, without prior notice or demand. The Lessor shall in any event be entitled to receive the rentals cited heretofore as minimums; however, during the first ten (10) year period of the term of this lease, the Lessor shall be entitled as an alternative to receive _____ percent of the gross revenue derived from the sale of crops grown on the leased premises in any lease year when said percentage of gross revenue exceeds the minimum rental paid for that year.

   C. In addition to the above, beginning with the eleventh (11th) year and continuing through the twenty-fifth (25th) year, the Lessor shall be entitled to receive either a sum equal to twenty (20) percent of the gross revenue derived from the sale of crops grown on the leased premises or a minimum rental of _____ Dollars ($) per acre per annum, whichever is greater. Rental payments shall be based on the net irrigable acreage as determined by the Secretary.

Receipt is acknowledged of payment in the amount of _____ Dollars ($), representing the first annual rental payment. In the event the adjusted acreage rental for the first year is less than $, the difference between the actual rental and the amount paid shall be refunded to the Lessee.

3. LEGAL DESCRIPTION: For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the following described premises within Township , Range , of the _____ Base and Meridian, County, State of :

The above descriptions are believed to be substantially correct, but in the interest of fairness to all parties hereto shall be subject to a survey which Lessee shall have made with the understanding that said description and water rights accruing thereto shall upon completion of said survey be modified, if necessary, to conform to said survey and the acreage disclosed thereby. The Lessor covenants that (A.) fee simple title to the leased lands is vested in the United States of America as trustee for the Lessor, and (B.) that the leased premises are free and clear of all liens and encumbrances of whatsoever kind or nature; and that, subject to the approval of the Secretary of the Interior, the Lessor has the lawful right and authority to make this lease; and the Lessee, upon performing and observing the covenants and conditions herein contained on Lessee's part to be performed and observed, shall and will peaceably and quietly have, hold, and enjoy said leased premises for the full life of this lease. The survey to be provided shall be subject to review by Bureau of Indian Affairs engineering personnel.

4. ANNUAL ACCOUNTING: The Lessee shall, not later than thirty (30) days after each successive anniversary of the beginning dats of this lease, which shall be the end of the fiscal year of the lease, submit to the Lessor and the Secretary certified statements of gross receipts. With said statements, Lessee shall tender payment of the amounts due under the rental provisions, 2B. and 2C. above. Said statements shall be prepared by a Certified Public Accountant duly licensed in the State of , in conformity with standard accounting practices. Any duly authorized representative of the United States Government, or qualified accounting agent or agents of the Lessor, shall have access to and the right to examine and audit any pertinant books, documents, papers, and records of the Lessee and the Lessee's tenants who are paying sublease rental based on a percentage of their income, relating to this lease during normal business hours of any working day. Acceptance by the Lessor or Secretary of any monies paid by Lessee as percentage rental as shown by any statement furnished by the Lessee shall not be an admission of the accuracy of said statement or of the sufficiency of the amount of said percentage rental paid, but the Lessor and the Secretary shall be entitled at any time within four (4) years after payment to question the sufficiency and the accuracy of such statement.

5. RESERVATIONS: It is understood and agreed that the Lessor reserves the right to make oil and gas leases, grant rights-of-way and other legal grants on the premises covered by this lease and that in the event such a lease or grant is made, the Lessee hereunder shall be entitled to damages for the actual loss sustained by him on account of said lese or grant. It is further understood that in the event of a dispute between the Lessee hereunder and the Lessee, Permittee, or Grantee under any oil and gas lease, right-of-way, or other grant, as to the amount of such actual damages, the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of the said damages.

6. IMPROVEMENTS: It is understood and agreed that any building or other improvements placed upon the leased premises by the Lessee shall become the property of the Lessor upon the termination or expiration of this lease. Any items such as pumps, gates and pipelines normally required and used in the irrigation of the leased premises shall likewise remain on the premises in an operable condition and shall become the property of the Lessor upon the termination or expiration of this lease. Other removable property shall remain the property of the Lessee and must be removed from the premises within sixty (60) days after the termination or expiration of the lease. "Removable personal property", as used herein shall not include property which would normally be attached to or affixed to the buildings, improvements, or land in such a manner that it would become a part of the realty, regardless of whether such property is so placed in or on or affixed to or attached to the buildings, improvements or land.

7. REPAIRS: It is understood and agreed that the Lessee is to keep the premises covered by this lease in good repair, and the Lessee will be responsible for all damages done to buildings and fences and other improvements, except the usual wear and decay.

8. OPERATION AND MAINTENANCE: All operation and maintenance of wells, pumps, water distribution systems, roads and other features constructed by the Lessee shall be the responsibility of the Lessee with operation and maintenance expenses borne solely by the Lessee.

9. SANITATION: Lessee shall keep and maintain all buildings, installations, and improvements on the leased premises and the areas surrounding such improvements and installations in a condition that conforms to the sanitary regulations of the United States Public Health Service and to such other Tribal ordinances as exist or may be enacted.

10. ENCUMBRANCE: This lease, or any right to or interest in this lease, or any of the improvements on the leased premises may not be encumbered without the written approval of the Lessor, the Secretary, and Sureties, and no such encumbrance shall be valid without such approval, which shall not be unreasonably withheld. An encumbrance may be made for the purpose of borrowing capital for the development and improvement of the leased premises.

11. DAMAGES-LIVESTOCK: The Lessee shall be liable for any damages caused by the trespass over lands owned or under lawful control of Indian third parties by livestock owned or under the control of the Lessee.

12. LIENS, ASSESSMENTS AND UTILITY CHARGES: Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed,

materials furnished, or obligations incurred by Lessee, but Lessee shall discharge all such liens; further, Lessee shall pay, when and as the same become due and payable, all taxes, assessments, licenses, fees and other like charges lawfully levied during the term of this lease upon or against the interest of the Lessee in the leased land and all property thereon for which the Lessee may become liable. In addition to the rents and other charges therein described, Lessee shall pay all charges for gas, electricity, telephone and other utility services supplied to said premises.

13. INSPECTION: The Lessor and/or his authorized agent or representatives shall have the right, at any reasonable times during the term of this lease, to enter upon the leased premises or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

14. RIGHT TO HARVEST GROWING CROPS: At the termination of this lease other than upon default of the Lessee, the Lessee shall have the right to retain possession of such portion of the leased premises as shall then be planted to annual crops and shall have the right to care for and harvest such crops in the ordinary manner at maturity, but in no event shall the extended period of time for harvest exceed ninety (90) days beyond the termination or expiration date of this lease.

15. RENTAL BOND: Upon approval of this lease by the Secretary, the Lessee agrees to post rental bond in the form of a Time Savings Certificate of Deposit in the penal sum of not less than one year's minimum rent, which certificate shall be deposited with the Secretary and shall remain in force for the full term of this lease at the discretion of the Secretary and the Lessor. The amount of the certificate shall be subject to adjustment to a sum equal to the last previously known year's annual rental in accordance with the provisions of Article 2., Rental.
When the Lessee has spent sufficient funds on permanent improvements to justify a waiver of the rental bond as security, then he may request a waiver thereof and it shall not be unreasonably refused.

16. ARBITRATION: Whenever during the term of this lease, the Lessee, the Lessor and the Secretary are unable to reach an agreement as required by this lease and it becomes necessary to submit a matter to arbitration for settlement, an Arbitration Board comprised of three persons shall be established; one member to be selected by the Lessee, one member to be selected by the Lessor, and the third to be selected by the other two members. The decision of the majority of the members of the Arbitration Board so constituted shall be binding on the parties, subject to the approval of the Secretary. The cost of the Arbitration Board shall be shared equally by the Lessor and the Lessee. It is further understood and agreed that the Secretary may be expected to accept any reasonable decisions reached by said Arbitration Board, but he cannot be legally bound by any decision which might conflict with the interests of the Indians or the United States Government.

17. NO PARTNERSHIP: Regardless of the fact that the terms of rental are in part on a percentage basis, Lessee and Lessor are not in partnership.

18. ANTIQUITIES: In accordance with the laws of Antiquity Act of 1906, it is understood and agreed by the parties hereto that any areas within the exterior boundaries of the leased premises containing graves, ruins or other antiquities, shall be undisturbed and plainly marked by Lessee and reported immediately to the Lessor and Secretary for appropriate disposition and action.
This shall likewise apply to any discoveries made in excavations during development of the leased premises. Said areas designated as antiquities shall be automatically withdrawn from the leased premises.

19. EMPLOYMENT: The Lessee, Sublessee or other successor in interest shall give employment preference to Tribal members in positions for which they are qualified, available and perform in a satisfactory manner.

20. RESERVATION LAWS AND ORDINANCES: The Lessee, Lessee's employees, agents, sublessees and assigns and their employees and agents agree to abide by all laws, regulations, and ordinances of the Tribe now in force and effect or that may be hereafter in force and effect, provided, that no such laws, ordinances, or regulations shall act in any manner whatsoever that will change or alter the terms and conditions of this lease without the expressed written consent of the Lessee.

21. WATER SUPPLY: The Lessee shall attempt to develop a water supply for the irrigable acreage and operate his own system. The Supply may be developed from:

A. Wells drilled within the leased area; or,

B. A pumping plant lifting water from the River.

The Lessee shall be entitled to the full use and exercise of all the Lessor's rights to the use of water appurtenant to the land comprising the leased premises. The drilling construction and pumping equipment costs shall be the sole responsibility of the Lessee. The operation and maintenance costs, including pumping water costs of said water supply system shall also be the responsibility of the Lessee.

22. DELIVERY OF PREMISES: At the termination of this lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises in good condition.

S U P P L E M E N T N O. I I

LESSEE: _____ LEASE NO.: _____

TERM: _____

****

ENGINEERING SPECIFICATIONS

1. REQUIRED LEASE IMPROVEMENTS: The major land development improvements which are required as consideration for this lease are summarized as follows;
   A. Clear land of all brush.
   B. Level all lands not to exceed 1,320 foot irrigation runs.
   C. Place road pads where needed for Agency roads.
   D. Construct canals as required to serve leased area.
   E. Construct and concrete line farm ditches required for distribution of irrigation water to the leased area.
   F. Construct all drains and drainage structures required for the leased area.
   G. Furnish all engineering surveys and designs required to perform items A. through F.

   All of the items in the above list shall meet the specifications or requirements set forth in other clauses contained in this lease.
   The Lessee will be permitted to irrigate from wells or install a pumping plant for lifting water from the River. Water will be developed so as to supply 1 CFS for each 40 acres within the lease area.

2. ENGINEERING PLANS AND SURVEYS: General project development plans and design criteria are completed for the leased area. These plans are to be used as a basis for development and can be obtained from the Land Operations Office, Agency. Engineering plans, designs and surveys for proposed or required changes in the general project development plans, and/or lease improvements shall be furnished by the Lessee for approval in advance of construction. The plans must be submitted in accordance with the procedures outlined below and shown on the sample drawings marked Exhibits 1 and 2. These exhibits are available from the Land Operations Office.
   A. General Plan; A general farm development plan shall be submitted in triplicate within the first six months of the lease period and written approval obtained of the plan prior to any construction other than clearing and grubbing. The general plan shall be presented in a form closely patterned after sample drawing Exhibit 1 and will show legal boundaries of the lease, location of the laterals, drains, roads, farm ditches, and pumps, if any. Direction of field irrigation and capacities of laterals, drains, and pumps shall also be shown on the plan. It is recognized that changes in the Lessee's general plan may become necessary as development progresses. In such case, modifications of the approved plan may be requested in writing. Modiffcation shall be approved in writing, prior to construction. Substantial modification will require a revised general plan to be submitted.
   B. Lateral Plans: A plan and profile sheet for each farm lateral or farm ditch shall be submitted in triplicate prior to the construction of any laterals or the lining of any farm ditch. The plan and profile sheets shall be presented in a form closely patterned after sample drawing Exhibit 2 and shall show the following information: Elevation of the top of the banks, the top of the concrete lining, the normal water surface, and the bottom of the lateral; the slope of the bottom in feet per foot; the location of all checks and culverts; and any other critical design features. Each change in the cross-section of a lateral shall be shown by station location, and a cross-sectional drawing and hydraulic properties table.
   C. Miscellaneous Plans: Plans for open drains, wells, pumping plants, land leveling,

and other permanent lease improvements, not specifically mentioned above, shall be submitted in triplicate in a form acceptable to the Secretary.

3. EARTH FILLS: Earth fills to be used in the construction of lease improvements shall be free of all brush and debris. The base for all fills shall be cleared of brush, weeds, and grass, and shall be ripped or disturbed to a minimum depth of 1.0 feet. Water for construction purposes will be provided by the Secretary, but shall be transported and distributed from designated delivery points by the Lessee at his sole expense.

4. LAND LEVELING: Land shall be leveled in tracts of not less than 20 acres except where it is necessary to conform to boundaries established by existing roadways, drains, and laterals, or other permanent land features. The length of irrigation runs may not exceed 1,320 feet. All surface drains and drain structures constructed within the lease perimeter shall be the responsibility of the Lessee; however, the design, location, and installation of drain structures are subject to approval by the Secretary. Cut and fill sheets shall be submitted by the Lessee and shall be subject to approval prior to starting leveling work.

5. ROAD PADS: The Lessee shall construct earth fill, road pads within the lease area at locations shown on the Project Development Plans or designated as part of the reservation road system. Specifications are available at the Land Operations Office. The Secretary will grade, compact, place gravel on, and complete the roads at his earliest convenience. Maintenance of the completed roads shall be the responsibility of the Secretary.

6. FARM DITCHES: Farm ditches shall be concrete lined a minimum of 1½ inches thick and have a minimum capacity of 14 CFS. Ditch pads shall be constructed concurrently with land leveling. A penvane measuring section and frame shall be installed on each farm ditch. Other type measuring devices may also be installed if prior approval is obtained. Border turnouts shall be located at 100 foot intervals and may be installed on both sides of the ditch. The turnouts shall be slide ditch gates (Waterman C-8 or equal). Other type gates, if they feature a positive locking device to prevent leakage, may be approved for installation. All ditch components shall be maintained to perform in accordance with manufacturers design standards and/or the engineering specifications. Components which have deteriorated below standards shall be replaced within the final year of the lease contract. Specifications which meet project standards for concrete lined ditch and penvane measuring section are available at the Land Operations Office. Maximum slope for farm ditches is 0.0002 feet per foot. Consideration should be given to installing a level farm ditch in order that the fields may be irrigated from wells.

7. CONCRETE FOR IRRIGATION STRUCTURES:

A. Concrete Materials:

(a) Cement: The cement shall be Portland Cement conforming to Federal Specifications SS-C-192g, Type II, low alkali.

(b) Aggregate: Fine aggregate shall be clean and strong, well-graded, natural sand, or crushed rock that will meet ASTMC-3355T sieve analysis. Coarse aggregate shall be clean and strong, well-graded natural gravel, or crushed rock within nominal size range of 3/16 to 1½ inches.

(c) Water: Water for the concrete shall be clean and free from oil, alkali, acid, organic matter, silt or other deleterious substances.

B. Concrete Mix:

The concrete shall be of such consistency and composition that it can readily be worked into the corners and recesses of the forms, and portions of the mix shall be such as to secure the lowest water-cement ratio which is consistent with good workability, a plastic and cohesive mixture, and one which is within the slump range of 2 to 4 inches. The concrete shall have a 28-day compressive strength of not less than 3,000 pounds per square inch. Exception: SCS specifications for concrete ditch lining may be approved.

C. Air Entrainment:

Air entrainment shall be used. The amount of air-entrainment agent, used in the concrete mix, shall produce a mix containing 3.5 to 5.5 per cent air entrainment by volume of concrete.

D. Tests of Concrete:

Test cylinders shall be taken as directed by the Secretary but not less than 1 cylinder for each structure.

E. Mixing:

The concrete mixers shall be designed and operated so that the concrete, as discharged from the mixer, shall be uniform in composition and consistency throughout the mixed batch, and from batch to batch. The mixing time shall be not less than 2 minutes per batch. The concrete shall be discharged from the mixer and in place within one hour after introduction of cement into the mixer.

F. Temperature:

Concrete shall not be placed when the ambient temperature is greater then 90° F., nor less then 40° F.

G. Placing:

Concrete shall be deposited as nearly as practicable directly in its final position. All surfaces against which concrete will be placed shall be properly cleaned and prepared to meet the best standards of concrete practice. The concrete shall be placed in approximately horizontal layers not to exceed 24 inches in depth and carried on, within the limits of practicability, in a continuous operation until the placing in the course, section, panel, or monolith is completed.

H. Consolidation:

Concrete shall be consolidated to the maximum practical density so that it is free from pockets of coarse aggregate or entrapped air and closes snugly against all surfaces of forms and enbedded materials. Consolidation shall be accomplished by vibration and supplemented by manual spading.

I. Forms:

Forms shall be used, wherever necessary, to confine the concrete and shape it to the required lines. Forms shall have sufficient strength to withstand the pressure resulting from placement and vibration of the concrete, and shall be maintained rigidly in position. The forms shall be clean and oiled before concrete is placed.

J. Curing:

A white pigmented, membrane curing compound shall be applied to the concrete surfaces to provide a continuous, uniform, membrane over all exposed area. The compound shall be applied according to the manufacturer's recommendations and as soon as practical after removal of forms.

K. Reinforcing Bars:

Reinforcing bars shall be ASTM, A 15, deformed, intermediate grade billet steel bars for concrete reinforcement. Placing laps, and splices of reinforcement shall conform to the Concrete Reinforcing Steel Institute recommended practice for placing reinforcing bars. Before the reinforcement is placed, the surfaces of the bars shall be cleaned of heavy, flaky rust, loose mill scale, dirt, grease, or other material that will destroy or reduce the bond. After being placed, the reinforcing bars shall be maintained in a clean condition until they are completely embedded in concrete. The reinforcement bars shall be accurately placed and secured in position so that they will not be displaced during the placing of concrete.

L. Drainage:

The Lessee is responsible for efficient drainage of his entire lease area. The prime criterion for good drainage in this lease is defined as maintaining the water table at all points greater than six feet below field level. The Lessee may construct an internal drainage system, subject to approval, whenever he feels a system will be beneficial. However, the Lessee will be required to construct a drainage system when and if ever the water table encroaches within six feet of field level. Upon receipt of notice in writing that such drainage condition exists, the Lessee shall construct open drains, drainage wells or other drainage structures deemed necessary to maintain effective drainage. The Lessee shall have one year to comply after receipt of such notice.

8. COMPLETION DATES:

All lease improvements except drainage shall be completed within the first five years of the lease. The west drain shall be completed within the first three years. The Lessee shall complete at least 20% of the total improvements, based on the total estimated cost, each year until the development is complete at the end of the fifth year. During the first six months of the lease the Lessee shall

present for approval an itemized cost estimate of the improvements listed under REQUIRED LEASE IMPROVEMENTS. This cost estimate when approved will be used as a basis for determination of compliance under the terms of this clause. The Lessee shall furnish a written statement of the work completed and the cost thereof within 60 days after the end of each lease year during the five year development period. The internal drainage construction, if required, shall be completed within one year from the date the Lessee is ordered in writing to begin construction.

S U P P L E M E N T N O. I I I

LESSEE: _____ LEASE NO.: _____

TERM: _____

****

LAND USE STIPULATIONS

1. CONSERVATION PLAN: A conservation farm plan will be made between the Lessee and the SMC section of the Agency. A cover crop will be planted and maintained on all idle lands within the bounds of this lease for the purpose of preventing soil erosion.

2. PARTICIPATION IN CROP PROGRAMS: Lessee shall cooperate and participate in the agricultural programs of the United States Department of Agriculture and the Federal Crop Control Program that will yield a benefit to the leased premises by the establishment and maintenance of base acreages and allotments. Nothing in this lease shall permit the removal of any crop allotment or benefits realized from Federal, State or other agencies from said land either during or at the termination of the lease. If the cotton base or other Federal Crop Control Program, crop allotment or crop history is lost or reduced, the Lessee hereunder shall be liable for damages for any such losses which are caused by his negligence or actions.

3. WEED CONTROL: All noxious weeds and brush shall be controlled within the areas described in this lease, including, but not limited to, fence rows, road and power line right-of-way, ditches, ditchbanks, house sites, camps and all other areas. For purposes of definition, noxious weeds include Johnson Grass, Arrow weed,Paiute weed,salt cedar, mesquite, morning glory and all other weeds considered noxious in the Stats of . Control is defined as the use of herbicide, mechanical means or tillage practices at or before the plant milk stage or period of propagation. Control shall give indication of a reduced weed or brush population with each growing season.

4. PEST CONTROL REGULATIONS: The Lessee shall comply with the regulations of Federal State and County agencies and of the Tribe for the control of pink bollworm, bollweevil, or other infestation. Such compliance shall include annual shredding, disking and plowing under all cotton stalks or other habitat by the date set and in the manner prescribed for the area by the regulating agencies, immediately following the last cotton harvest and before the termination date of the lease.

5. RIGHT TO CORRECT NON-COMPLIANCE: The Lessor or the Secretary shall have the right, in addition to any other right or remedy hereunder,to enter upon the premises, after five (5) days written notice to the Lessee, and cure any default or non-compliance by Lessee with the provisions as set forth above, and Lessee agrees to reimburse Lessor or Secretary for all expenses and costs incurred therein.

6. COMPLIANCE WITH STIPULATIONS: Lessee hereby accepts and agrees to complete all improvements and to comply with the stipulations as set forth herein, and further agrees to comply with the Agency SMC plans, supervision and direction.

7. POLLUTION CONTROL: The Lessee shall, during the construction of permanent improvements

on the leased premises, install wherever necessary and as required by the Lessor and the Secretary, anti-pollution devices which will reduce the harmful effects to the surrounding areas, from the creation of pollution, including but not limited to air, water, soil, and aesthetic view pollution.

The anti-pollution devices installed as a result of this clause shall conform to the laws of the State of governing the installation and quality of said devices.

Failure on the part of the Lessee to abide by the terms of this clause shall constitute a material breach of this lease and shall subject it to cancellation according to the provisions contained in 25 CFR 162.14 - Violation of lease.

LEASING ACTION PLAN

1. Determine which leases will expire within the next eighteen months.

2. Submit list of lands covered by expiring leases to Land Operations Branch with a request for farm plans and lease stipulations.

3. Request appraisals.

4. Issue 90 day notices to owners of land in fractional ownership. Notify other owners that leases are expiring.

5. Negotiated Leases:
   a. Receive applications to lease signed by prospective lessee and at least one landowner.
   b. Route applications to Social Services, Credit and Land Operations, as appropriate, for comment.
   c. Submit applications to Superintendent with recommendations for approval or disapproval.
   d. Prepare leases for approved applications.
   e. Notify prospective lessee and landowners whose applications have not been approved and give reasons for disapproval.
   f. When signed leases are returned, review for signatures, bonding, insurance coverage, rent and fee payment.
   g. Submit properly documented leases to Superintendent for approval.
   h. Distribute copies of approved leases.
   i. Furnish payment schedule to IIM where rent is paid to agency.
   j. Record approved lease data in log, on lessee and lessor cards and on plats.
   k. File lease and related documents.

6. Advertised Leases:
   a. Prepare lease advertisements.
   b. Mail and post advertisements.
   c. Hold bid opening and prepare abstract of bids.
   d. Return deposits of unsuccessful bidders.
   e. Have deposits of successful bidders placed in special deposits.
   f. Prepare leases for successful bidders and mail.
   g. When signed leases are returned, review for signatures, bonding, insurance and rent and fee payments.

h. If tribal land is involved, submit lease to tribal officials for action.
i. Submit properly completed leases to Superintendent for approval.
j. Distribute approved leases.
k. Furnish payment schedule to IIM.
l. Record lease data in log, on lessee snd lessor cards and on plats.
m. File lease and related documents.

LEASING CHECK-LIST

FINAL REVIEW OF DOCUMENT(S) PRIOR TO APPROVAL

Identification number(s) of land:_____

( ) LEASE/PERMIT

( ) HAY PERMIT MODIFICATION ( ) ASSIGNMENT OR TRANSFER OF LEASE

( ) SAND OR GRAVEL PERMIT ( ) SUB-LEASE

( ) RIGHT-OF-WAY PERMIT ( ) OTHER:_____

		YES	NO
1.	All forms dated and properly completed.	( )	( )
2.	Signatures of all parties to documents, including witnesses.	( )	( )
3.	All forms properly notarized where required.	( )	( )
4.	Properly completed surety bond furnished.	( )	( )
5.	Ownership information on document shows living heirs and unprobated estates with their identification numbers and their fractional share in the land as well as rental or other proceeds.	( )	( )
6.	Fees and taxes paid. Receipt No._____	( )	( )
7.	Revisions or changes made on documents, including witnesses.	( )	( )
8.	Proper CFR and other citations shown where Superintendent is to sign.	( )	( )
9.	Appraisal on file.	( )	( )
10.	Adequate rental.	( )	( )

DATE:_____ _____
LEGAL CLERK, TEN. & MGMT. SECTION

DATE:_____ _____
SECTION CHIEF, TEN. & MGMT. SECTION

REMARKS:_____

Handouts - Session Four

Handout Four-A

Form 5-[illegible] 5445
(October 1961)

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

LEASE

Allotment No. .....

Lease No. .....

Contract No. .....

..... Indian Agency

THIS CONTRACT, made and entered into this ..... day of ....., A.D. 19....., by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of the Indians) hereinafter called the "lessor," and .....

.....

.....

.....

.....

....., hereinafter called the "lessee" in accordance with the provisions of existing law and the regulations (25 CFR 131) which by reference are made a part hereof.

WITNESSETH, That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee the land and premises described as follows, to wit:

.....

.....

.....

containing ..... acres, more or less, for the term of ..... years, beginning on the ..... day of ....., 19....., to be used only for the following purposes: .....

.....

The lessee, in consideration of the foregoing, covenants and agrees, as rental for the land and premises, to pay:

TO—	DATE DUE	AMOUNT

In the event of the death of any of the owners to whom, under the terms of this lease, rentals are to be paid direct, all rentals remaining due and payable shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises. This provision is applicable only while the leased premises are in trust or restricted status.

While the leased premises are in trust or restricted status, the Secretary may in his discretion, and upon notice to the lessee, suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

This lease is subject to the following provisions:

1. "SECRETARY" as used herein means the Secretary of the Interior or his authorized representative.

2. IMPROVEMENTS.—Unless otherwise provided herein it is understood and agreed that any buildings or other improvements placed upon the said land by the lessee become the property of the lessor upon termination or expiration of this lease.

3. UNLAWFUL CONDUCT.—The lessee agrees that he will not use or cause to be used any part of said premises for any unlawful conduct or purpose.

4. SUBLEASES AND ASSIGNMENTS.—Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of all parties to this lease, including the surety or sureties.

5. INTEREST.—It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest at the rate of 6 percent per annum will become due and payable from the date such rental became due and will run until said rental is paid.

6. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.—Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified by the Secretary of any such change in the status of the land.

7. RENTAL ADJUSTMENT.—The rental provisions in all leases which are granted for a term of more than five years and which are not based primarily on percentages of income produced by the land shall be subject to review and adjustment by the Secretary at not less than five-year intervals in accordance with the regulations in 25 CFR 131. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by this contract or the contribution value of such improvements.

8. INTEREST OF MEMBER OF CONGRESS.—No Member of, or Delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

9. VIOLATIONS OF LEASE.—It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations in 25 CFR 131.

10. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.—No assent, express or implied, to any breach of any of the lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

11. UPON WHOM BINDING.—It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, successors, executors, and administrators of the parties of this lease. While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of its sureties, are to the United States as well as to the owner of the land.

12. APPROVAL.—It is further understood and agreed between the parties hereto that this lease shall be valid and binding only after approval by the Secretary.

13. ADDITIONS.—Prior to execution of this lease,

provision(s) number(s) .....

..... has (have) been added hereto and by reference is (are) made a part hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this .....

day of ....., **19**.....

Witnesses (two to each signature):

.....

P. O. .....

.....

P. O. .....

.....

P. O. .....

RENTAL PERCENTAGES FOR RETAIL BUSINESSES

BASED ON GROSS SALES

LEASES OF IMPROVED PROPERTY

Type of Business	Range in % of Sale
Aircraft	3 - 4
Antiques and used furniture	6 - 8
Army and navy	7 - 8
:t, curio, gifts, etc.	5 - 8
Auto tires, batteries, tubes	4 - 5
Auto supplies - chain	2 - 3
Auto agencies	2 - 3
Auto repairs and parts	2 - 4
Awnings, flags, tents	5 - 7
Bakeries and bakery goods	5 - 7
Bakeries in supermarkets	3 - 4
Barber shops	8 - 12
Barber supplies - wholesale	3 - 4
Bars	6 - 9
Beauty shops, service	8 - 12
Bicycles (including repairs)	6 - 8
Boats, yachts, canoes	3 - 4
Boilers and furnaces	3 - 5
Book stores, circulating libraries	5 - 8
Bowling, pool, roller skating	8 - 10
Building materials - misc.	2 - 3
Business schools	12 - 15
Candy, fountain, luncheon	5 - 8
Cash registers, typewriters, adding machines	5 - 7
Caterers	6 - 8
Children's and infant's wear	5 - 8
China, crockery, enamelware	7 - 8
Cigars, etc., newstand	4 - 7
Cleaners and dyers	6 - 8
Coal, feed, ice, wood	1 - 2
Cooperage, barrels, boxes	2 - 3
Cosmetics	5 - 8

Type of Business	Range in % of Sale
Corsets, girdles, etc.	10 - 12
Dairy products	2 - 4
Decorating and finishing	4 - 6
Delicatessens in supermarkets	4 - 5
Dental laboratories	2.5 - 5
Department stores: less than $500,000	3 - 4
over $500,000 to $5,000,000	1.5 - 3
over $5,000,000	1 - 2
Draperies, curtains, and upholstery	5 - 7
Dressmakers	6 - 8
Drive-in Restaurant	4 - 6
Drugs and toilet preparations	4 - 7
Drugs: Chain and cut-rate	2 - 5
Dry goods	3 - 5
Eggs and poultry	4 - 5
Electric appliances	4 - 8
Farm implements and supplies	2 - 3
Farm produce (roadside)	2 - 3
Fish markets, sea foods	3 - 5
5, 10, 25 to $2.00 stores, advt. and non-advt.	4 - 8
Floor coverings	5 - 6
Florist - estab. stores, large volume	4 - 7
Foods, health	5 - 7
Frozen fruits and vegetables	3.5 - 4
Fruits and vegetables: supermarkets	2.5 - 4
small store	6 - 10
Fruit juices	8 - 12
Furniture: cash, credit, home, ind. desks, office furniture and equipment	3 - 6
Furs and furriers	6 - 10
Gargages - storage, parking lot	40 - 50
Gas stations	1 - 2 /gal.
Gasoline - wholesale	4 - 6
Gift shops	5 - 10
Glass and mirror	5 - 6
Golf ranges	15 - 18
Groceries, ordinary	3 - 5
Groceries in supermarkets (self service)	1 - 1.5
Groceries (rural) with apparel, dry goods, and general merchandise	1.5 - 2
Haberdasheries	5 - 8
Hardware	3 - 5
Heating appliances and oil burners	2 - 4

Type of Business	Range in % of Sale
Hotels (of room rent)	20 - 25
Household appliances, incl. electric	3 - 4
Ice cream	6 - 8
Infant's wear	5 - 8
Iron and steel products	1.5 - 4
Jewelry for cash	5 - 7
Jewelry - cheap costume, novelty	7 - 10
Junk dealers	2.5 - 4
Lamps and shades	8 - 10
Laundry	8 - 12
Leather goods, including shoes and harness repair	6 - 10
Liquor, package goods	4 - 6
Lumber	2 - 3
Lunch counters	5 - 8
Machinery and machine shop	2 - 4
Mail order house, general mdse.	1 - 1.5
Meat markets: in supermarkets and chains	2 - 3
ordinary	3 - 5
Mens' and boys' clothing	4 - 8
Mens' and boys' hats	6 - 8
Mens' and womens' clothing cash and credit	4 - 8
Mens' furnishings	5 - 8
Mens' shoes: volume	5 - 6
quality	6 - 8
Millinery, exclusive	10 - 12
Motion pictures, small, large with vaudeville	12 - 15
Motorcycles	3 - 4
Music stores	4 - 6
Novelty shops and souvenirs	5 - 10
Nuts	8 - 10
Office and school supplies	5 - 8
Optical stores	6 - 8
Opticians and optometrists	7 - 10
Oriental and Russian rugs	5 - 10
Paints, glass, varnishes, specialty lines wallpaper, and supplies	4 - 6
Parking lots	40 - 50
Pawnshops	4.5 - 10
Petroleum products	1 - 1.5
Photographs	3.5 - 6
Pictures and framing	10 - 12
Plumbing, heating and ventilating	4 - 5
Radio and television	4 - 8
Radio, installment	3 - 5
Refrigerators, electric and gas	2 - 4
Restaurant supplies	3 - 5

Type of Business	Range in % of Sale
Restaurants, cafeterias	4 - 6
Roofing	2 - 3
Rugs	4 - 8
Scientific and medical instruments and supply retail	4 - 5
Seeds, bulbs, plants, and nursery stock	5 - 7
Sewing machines	4 - 6
Shoes, men's, women's, children's, varied prices	5 - 8
Shoes, repairs	6 - 10
Sporting goods: athletic and playground equipment, specialty toys and stationery	5 - 8
Store fixtures	4 - 5
Stoves and ranges	5 - 6
Tailors - cash, credit, custom and merchant	5 - 10
Teas, coffees, spices	2.5 - 3
Theaters	8 - 12
Theaters, drive-in	3 - 4
Tourist camps	2 - 5
Toys	8 - 10
Transfer and storage	2 - 5
Travel bureaus	8 - 10
Trunk and leather goods	6 - 10
Typewriters	3 - 4
Undertakers	5 - 8
Upholsterers	5 - 9
Women's accessories, incl. lingerie and hosiery	5 - 8
Women's and children's apparel	5 - 8
Women's and children's apparel chains	4 - 6
Yardage	4 - 6

Handout - Session Five

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Lease No._____
Cont. No._____
Allot. No._____

BUSINESS LEASE

1. Parties.

THIS LEASE, in sextuplicate, is made and entered into this _____ day of _____, 19___, by and between _____ _____ Allottee No._____ of the _____, hereinafter called the "Lessor", whose address is _____ _____, and _____ _____ _____, hereinafter called the "Lessee", whose address is _____ _____, under the provisions of the Act of August 9, 1955, as amended, 25 U.S.C. 415, as implemented by Part 162 - Leasing and Permitting - of the Code of Federal Regulations, Title 25 - Indians, and any amendments thereto relative to Business Leases on restricted Indian lands which by reference are made a part hereof.

2. Description.

For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the following described premises:

That portion of the Allotment of _____ Allottee No._____, located in Section_____, Township___ _____, Range___ _____, of the _____ Meridian, more particularly described as follows:

as shown on the attached plat marked "Exhibit A" which is made a part hereof by reference, all of which is located in _____ County, State of _____, containing _____ acres, more or less, subject to any prior, valid, existing rights-of-way.

3. Definitions.

A. "Secretary" means the Secretary of the Interior or his authorized representative, delegate or successor.

B. "Gross receipts" means all income, including money and any other thing of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships or other legal entity, or received by or paid to others for Lessee's or its affiliate's use and benefit, derived from business done, sales made or services rendered directly or indirectly from or on the leased premises, or derived from the subleasing, subrenting, permitting, contracting or other use of the leased premises or

any portion thereof. All income accruing from credit transactions shall be treated as "gross receipts" as of the date credit is extended.

"Gross receipts" shall not include amounts collected and paid out for a sales or excise tax imposed by a duly constituted governmental authority where such tax is billed to the purchaser as a separate item. It shall not include credits for the exchange of goods or merchandise between the stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly or indirectly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof, is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures or good will.

[Alternate Gross Receipts Definition]

"Gross receipts" means receipts from gross sales of Lessee and of all licensees, concessionaires, and tenants of Lessee, from all business conducted upon or from the leased premises by Lessee and all others, and whether such sales be evidenced by check, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise and for services performed on or at the leased premises, together with the amount of all orders taken or received at the leased premises, whether such orders be filled from the leased premises or elsewhere, and whether such sales be made by means of merchandise or other vending devices in the leased premises. If any one or more departments or other divisions of Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in gross receipts for the purpose of fixing the percentage rent payable hereunder all the gross sales of such departments or divisions, whether such sales be made at the leased premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Lessee's business had been conducted by Lessee itself. Gross sales shall not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been included in gross sales; and there shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales. Gross receipts shall not include the amount of any sales, use or gross receipts tax imposed by any Federal, State, municipal or governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price, and paid by the Lessee to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from gross receipts in any event whatever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Lessee shall receive payment (whether full or partial) therefor.

C. "Approved encumbrance" herein shall mean an encumbrance approved by the Secretary, the Lessor, and sureties, if any, in the manner provided

herein. "Encumbrancer" herein shall mean the owner and holder of an approved encumbrance.

4. Term.

The term of this lease shall be 25 years, beginning on the date the lease is approved by the Secretary.

[Alternate Term Clause]

The term of this lease shall be _____( ) years beginning on _____, 19___, and ending on _____ _____, _____.

5. Renewal.

This lease may be renewed at the option of the Lessee for a further term of not to exceed 25 years, commencing at the expiration date of the original term, upon the same conditions and terms as in effect at the expiration of the original term, provided that notice of the exercise of such option shall be given by the Lessee to the Lessor and the Secretary in writing at least 12 months prior to said expiration of original term.

6. Rentals.

The Lessee, in consideration of the foregoing, agrees to pay in lawful money of the United States of America to _____ _____ _____ the following rental:

A. Guaranteed minimum annual rentals of

Said guaranteed minimum annual rentals shall be paid in advance, the first payment to be deposited with the BUREAU OF INDIAN AFFAIRS when this lease is submitted for approval, and subsequent payments to be made to _____ _____ on or before _____.

B. As additional rental over and above guaranteed minimum annual rentals, a sum equal to the difference between said minimum annual rentals and the following percentages of gross receipts of businesses, as specified below, and whether such businesses are operated by Lessee, Sublessee, Assignee or Concessionaires:

(1)
(2)
(3)
(4)
(5)
(6)
(7)

If any part or parts of the leased premises are used for any purpose or purposes other than those set out above, the percentage rentals for such uses shall be negotiated by the Lessor and the Lessee, subject to the approval of the Secretary prior to the time such uses are commenced.

Rental unpaid 10 days after the due date shall bear interest at _____ percent per annum from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified. The rents called for hereunder shall be paid without prior notice or demand.

In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

[First Alternate Rentals Clause]

In consideration of the foregoing, Lessee agrees to pay in lawful money of the United States of America_____ _____ for the use and benefit of the Lessor the following rental:

A. A sum of money equal to _____ of the gross rental income as hereinafter defined derived from the sublease of residential lots; or

B. A guaranteed minimum annual rental of $_____ for the term of this lease, whichever is greater.

C. The term "gross rental income" as used herein means the income to the Lessee hereunder produced or derived from the subleasing, permitting, contracting, or other authorized use of the premises by individuals, partnerships, corporations, or other firms or business entities, other than the Lessee hereunder, at not less than the fair annual rental value of each part or portion of the premises so subleased, permitted, or otherwise contracted for use, and also includes the fair annual rental value of each part or portion of the premises as may be utilized by the Lessee and/or its affiliates, whether persons, partnerships, firms or controlled corporations, for its development or for its business or businesses conducted thereon. In the event the Lessor and Lessee do not mutually agree upon the fair rental value of the part or portion of the leased premises so subleased or utilized, then the fair rental value shall be established by a professionally qualified appraiser acceptable to and whose qualifications have been accepted by the Secretary, the Lessor and the Lessee. The expenses for the services of such appraiser shall be paid for by the Lessee unless the report of the appraiser shall indicate that the fair rental value does not exceed that fair rental value as submitted by the Lessee, and, in such event, then the expenses for the services of said appraiser shall be paid for by the Lessor.

D. The guaranteed minimum annual rental for the first year shall be paid in advance upon the execution of this lease, and thereafter said guaranteed minimum annual rental shall be paid in advance on each annual anniversary date of the effective date of this lease, and annually thereafter.

E. The percentage rental provided for herein shall be determined at the end of each and every fiscal year of the lease, and the Lessee shall within 30 days of the end of such fiscal year pay unto the Lessor the

amount of such percentage rental that is in excess of the minimum guaranteed rental paid at the last preceding anniversary date of the lease.

[Second Alternate Rentals Clause]

The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Lessor the following rental:

A. Guaranteed minimum annual rentals of _____ dollars ($) per year.

Said guaranteed minimum annual rentals shall be paid in advance, the first payment to be deposited with the BUREAU OF INDIAN AFFAIRS when this lease is submitted for approval, and subsequent payments to be made to the Lessor on or before each successive anniversary of the beginning date of this lease.

B. In addition to the guaranteed minimum rentals, Lessee agrees to pay to Lessor, in the manner and upon the conditions and at the times hereinafter set forth during each lease year, and as percentage rent hereunder, a sum equivalent to the amount, if any, by which ___ percent of the gross receipts, as herein defined, exceeds the guaranteed minimum rent payable during a lease year. Said percentage rent shall be payable as hereinafter provided at the address of the Lessor, or at such other place as the Lessor may designate, without any prior demand therefor, and, except as provided in Clause C of this section, without any set-off or deduction whatsoever.

C. Said percentage rent shall be paid quarter-annually. The first payment of percentage rent shall be paid on or before the 15th day after the last day of the first 3 calendar months of the first lease year of the term hereof, and other payments of percentage rent shall be paid on or before the 15th day after the end of each successive 3-month calendar period thereafter. The amount of each payment of percentage rent shall be equal to the amount, if any, by which the percentage (described in the foregoing Clause B of this section) of the gross receipts for the immediately preceding 3 calendar months exceeds 1/4 of the guaranteed minimum annual rental for the then current lease year. If, at the end of any lease year, the total amount of rent paid by the Lessee exceeds the total amount of guaranteed and percentage rent required to be paid by the Lessee during such lease year, the Lessee shall receive a credit equivalent to such excess which may be deducted by the Lessee from the next payment of percentage rent due under the provisions hereof.

D. For the purpose of computing the percentage rent payable hereunder for the first lease year of the term hereof, the gross receipts received during the first fractional calendar month, if any, of the term hereof shall be added to the gross receipts for the first 3-month period of the lease year of the term hereof.

[Third Alternate Rentals Clause]

The Lessee, in consideration of the foregoing, covenants and agrees to pay annual rentals in lawful money of the United States of America, to the Lessor at the address specified herein, as follows:

First year	_____	Dollars ($)
Second year	_____	Dollars ($)
Third year	_____	Dollars ($)
Fourth year	_____	Dollars ($)
Fifth and each succeeding year	_____	Dollars ($)

The above rentals shall be paid annually in advance on or before the successive anniversaries of the beginning of this lease without prior notice or demand.

The annual rentals for the sixth and succeeding years shall be subject to adjustment as provided in Clause 7 of this lease.

7. Rental Adjustment.

This lease shall be subject to readjustment of fixed annual rentals at the end of the fifth year of its term and at the end of each five year period thereafter. Ninety days prior to the time specified for such readjustment, a professional contract real estate appraiser-evaluator whose qualifications are acceptable to both parties hereto will be selected to review the equities involved. If the parties are unable or fail to agree on an appraiser-evaluator at the time indicated above, they shall each forthwith submit to the Secretary the name and address of an acceptable appraiser-evalutator and the Secretary shall select one appraiser-evaluator from the name or names so submitted. The review of the equities involved shall give consideration to the economic conditions at the time and with reference to the demised premises and will give consideration to land value, exclusive of improvements or development required by this lease or the contributive value to the real estate of such improvements. The conclusions of the selected appraiser-evaluator, when approved by the Secretary shall establish the fair rental to be paid by Lessee during the ensuing period. The cost for the services of the appraiser-evaluator shall be shared equally by the Lessor and the Lessee.

[Alternate Rental Adjustment Clause]

At the end of each 5 years of the term of this lease and any renewal thereof, the rental provided in Clause 6 shall be adjusted to a proportionate amount as compared with the then current index figure of the "All Items" segment of the Consumer Price Index, U. S. City Averages for All Urban Consumers, published monthly by the Bureau of Labor Statistics, U. S. Department of Labor. The latest index figure available prior to the above-stated intervals shall be compared to the index figure in effect the month in which this lease became effective (which is _____) and the annual rental for the ensuing 5-year period will be adjusted in direct proportion to the change in the index.

If the base of said index shall be changed from the 1967 base of 100, then the new base shall be converted to the 1967 base and such converted base shall be used.

8. Accounting and Audits.

The Lessee shall, not later than 45 days after each successive anniversary of the beginning date of the term of this lease, which shall be the end of the fiscal year of this lease, submit to the Lessor and the Secretary, certified audit reports of gross receipts. With said audit reports, Lessee shall tender payment of any difference between the guaranteed minimum annual rental and the amount due under the provisions of Clause 4 above. Said audit reports and an opinion shall be prepared by a Certified Public Accountant, licensed in the State of _____, in conformity with standard accounting procedures. Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right

to examine and audit any pertinent books, documents, papers and records of the Lessee and Lessee's tenants relating to this lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases pertaining to this right and shall make available to said representative, agent or agents all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

In the event the Lessor should cause an audit of the Lessee's pertinent books, documents, papers and records by a Certified Public Accountant, licensed in the State of _____, in conformity with standard accounting procedures and if such audit reveals error as a result of which the Lessor has been paid less than 98 percent of the amount to which Lessor is entitled for any reporting period covered by the audit, then the expense of such audit shall be borne by the Lessee; otherwise, it will be borne by the Lessor. Upon approval by the Secretary or his authorized representative, the audit so performed shall be binding upon both the Lessor and the Lessee.

The acceptance by Lessor of any monies paid to Lessor by Lessee as percentage rental for the leased premises as shown by any audit report furnished by Lessee shall not be an admission of the accuracy of said report, or of the sufficiency of the amount of said percentage rental payment, but Lessor or the Secretary shall be entitled at any time within 4 years after the receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the audit report or reports furnished by Lessee to justify the same, and shall have the right to examine and/or audit as hereinbefore described; therefore, Lessee shall for said period of 4 years after submission to Lessor or the Secretary of any such report keep safe and intact all of Lessee's records, books, accounts and other data which in any wise bear upon or are required to justivy in detail any such report, and Lessee shall insert a provision in all subleases requiring similar retention of records.

9. Liens, Taxes, Utilities.

Lessee shall not permit to be enforced against the leased premises or any part therof, any liens arising from any work performed, materials furnished or obligations incurred by Lessee, but Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay, when and as the same become due and payable, all taxes, assessments, licenses, fees and other like charges levied during the term of this lease upon or against the leased land and all interests therein and property thereon for which either the Lessee or Lessor may become liable. Upon written application, the Lessee shall furnish to the Secretary written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax or assessment against the property by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless the Lessor, the Secretary and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments and like charges and any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee. In addition to the rents, taxes and other charges herein described, Lessee shall pay all charges for water, sewage,

gas, electricity, telephone and other utility services supplied to said premises. Nothing in this lease shall require the Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Lessor, or any income, excess profits tax, or any other tax assessment, charge or levy upon the rent payable by Lessee under this lease.

10. Purpose of the Lease.

Lessee shall use the leased premises for the following purposes:

_____

_____

_____

_____

Lessee may also use the leased premises for the following purposes:

_____

_____

_____

_____

If the Lessee desires to use the leased premises for any purpose not set forth above, such additional purposes shall be negotiated by the Lessor and the Lessee, subject to the approval of the Secretary.

11. Plans and Designs.

Within 90 days after the approval of this lease, the Lessee shall submit to the Secretary for approval, a general plan and architect's design for the complete development of the entire leased premises. Before commencing any construction on the leased premises, the Lessee shall submit to the Secretary comprehensive plans and specifications for the improvements then proposed; the Secretary shall approve them if they conform to the general development plan, but shall not thereby assume any responsibility whatever for detailed design of structure or structures or violation of any State, county, or city law or ordinance. The Secretary shall either approve or state his reasons for disapproval of plans and specifications within 30 days after their submission. No change will be made in plans or specifications after approval without the consent of the Secretary.

12. Completion of Development.

The Lessee shall complete the full improvement and development of the leased premises in accordance with the general plan and design submitted in accordance with Clause 11 above within _____ years from the beginning date of the term of the lease. If the Lessee fails to complete full development within such period, the guaranteed minimum annual rental payable under this lease shall increase 10 percent at the beginning of the next fiscal year of this lease. For each full fiscal year thereafter that the Lessee fails to complete such full improvement and development, the guaranteed minimum annual rental payable under this lease shall be increased and additional 2 percent.

13. Non-responsibility Notices.

Prior to the commencement or construction of each improvement on the lease property, or any repair or alteration thereto, or work or labor

thereon, the Lessee shall give the Secretary ten (10) days advance notice in writing of intention to begin said activity, in order that non-responsibility notices may be posted and recorded as provided by state law. Lessor hereby authorizes the Secretary to post said notices on Lessor's behalf. Nothing contained herein shall be construed as a waiver of immunity of trust or restricted from mechanic's or materialmen's liens or obligate the Secretary or Lessor to post non-responsibility notices while the leased premises are in a trust or restricted status.

14. Improvements.

As a material part of the consideration for this lease, the Lessee covenants and agrees that within one year after the beginning date of the term of this lease, Lessee will have completed construction of permanent improvements on the leased premises at a cost of, and having a reasonable value of _____ dollars ($).

All buildings and improvements, excluding removable personal property and trade fixtures, in the leased property shall remain on said property after the termination of this lease and shall thereupon become the property of the Lessor. The term "removable personal property" as used in this Clause shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on, or affixed or attached to, the buildings, improvements or land is such a way as to legally retain the characteristics of personal property.

15. Delivery of Premises.

Except as provided in Clause ____, the Lessee hereby agrees that at the termination of this lease, by normal expiration or otherwise, Lessee will peaceably and without legal process, deliver up the possession of the premises herein described and buildings and immprovements, exclusive of the personal property which remains the Lessee's property, in good condition, usual wear and acts of God excepted.

16. Unlawful Use.

The Lessee agrees not to use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

17. Construction, Maintenance, Alteration and Repairs.

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of buildings exposed to perimeter properties shall present a pleasant appearance and all service areas shall be screened from public view. The Lessee shall have the right at any time during the term of this lease to make limited alterations or additions and any repair to any improvement on or placed upon the premises; no single alteration, addition or remodeling of improvements involving an expenditure in excess of $_____, or removal or demolition of improvements, shall take place without the prior written consent of the Lessor and the Secretary. The Lessee shall, at all times during the term of this lease and at the Lessee's sole cost and expense, maintain the premises and all improvements

thereon in good order and repair and in a neat, sanitary and attractive condition. Lessee shall construct, maintain and repair, as required by law, all improvements on the leased premises and any alterations, additions or appurtenances thereto, and shall otherwise comply with all public laws, ordinances and regulations applicable to said premises. Lessee shall indemnify and hold harmless the Lessor and the United States Government against liabiliity for all claims arising from Lessee's failure to maintain said premises and the improvements thereon, as hereinabove provided, or from Lessee's nonobservance of any law, ordinance or regulation applicable hereto.

18. Indemnification.

Neither the Lessor nor the United States Government, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States Government and agrees to hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage, or injury arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

19. Fire and Damage Insurance.

Lessee shall, from the date of approval of this lease, carry fire insurance with extended coverage endorsements, and vandalism, jointly in the names of Lessee and Lessor, covering the full insurable value of all improvements on the leased premises. Said policy or policies shall be deposited with the Secretary, and Lessee shall pay all premiums and other charges payable in respect to such insurance, and shall deposit with the Secretary the receipt for each premium or other charge as paid, or satisfactory evidence thereof. In the event of damage to any improvement on the leased premises, the Lessee shall reconstruct the improvement in complicance with applicable laws and building regulations and in accordance with plans to be approved pursuant to Clause 11 hereof. Such reconstruction shall commence within one year after the damage occurs and shall be pursued diligently. Insurance proceeds shall be deposited in escrow with an institution approved by the Secretary. The Lessee shall also deposit in said escrow all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvement, and funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's or contractor's certificate.

If Lessee has not defaulted under this lease, all money in escrow after reconstruction has been completed shall be paid to Lessee; if a default has taken place, said money shall remain in escrow as security for performance of Lessee until said default is corrected, after which funds remaining shall be paid to Lessee. If Lessee does not correct the default, said funds shall be paid to Lessor.

In the event of damage to the extent of 75 percent or more of the total value of all improvements on the leased premises during the last 5 years of the term of this lease, the Lessee shall have the option whether or not to reconstruct said improvement. Should Lessee elect not to reconstruct, the leased premises shall be cleared at Lessee's expense and, upon the completion of such clearing, this lease shall terminate. In that event, all insurance proceeds shall be paid to the Lessor.

Any encumbrancer shall be named as a beneficiary under the insurance mentioned in this Clause and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the amount of the approved encumbrance) shall be paid to the encumbrancer. If such amount paid to the encumbrancer is sufficient to repair the loss or damage with respect to which it was paid or if Lessor or Lessee shall within 3 months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall upon written order of Lessor and Lessee pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; otherwise, at the expiration of such 3 months, said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance.

20. Public Liability Insurance.

At all times during the term of this lease, Lessee shall carry a public liability insurance policy in the amount of $500,000.00, $1,000,000.00 for personal injury, and $500,000.00 for property damage, said policy to be written jointly to protect Lessee and Lessor. Copy of said policy shall be furnished the Secretary. Neither the Lessor nor the United States Government, nor their officers, agents and employees shall be liable for any loss, damage or injury of any kind whatsoever to the person or property of the Lessee or sublessees or of any other person whomsoever, caused by any use of the leased premises or by any defect in any structure erected thereon or arising from any accident, fire or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, waives on Lessee's behalf all claims against Lessor and/or the United States Government and agrees to hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage or injury arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

21. Rental Bond.

Within ____ days from date of approval of this lease by the Secretary, the Lessee agrees to post a satisfactory bond in a penal sum of not less than the second year's minimum rent, which bond shall be deposited with the Secretary and shall remain in force for the full term of the lease, at the discretion of the Secretary. Should Lessee fail to post said bond within the specified ____-day period, Lessee shall be deemed in default under Clause 29 "Default" of this lease and written notice shall be issued by the Secretary to Lessee pursuant to said Clause. The amount of said bond shall be subject to adjustment during the term of the lease to a sum equal to the next year's minimum rent, and Lessee hereby agrees to effect said

adjustment before the end of each current year. Should waiver of rent bond be granted during the term of this lease, the Secretary reserves the right to request that the Lessee furnish bond at a later date, and Lessee hereby agrees to comply with said request. Lessee may furnish a corporate surety bond or, in lieu of corporate surety bond, Lessee may deposit with the Secretary cash or negotiable United States Treasury Bonds or other negotiable Treasury obligations in the appropriate amount, together with power of attorney, appointing and empowering the Secretary, in the event of Lessee's default in any of the rent provisions of this lease, to pay over any such cash, or to dispose of any such bonds and pay over the proceeds derived therefrom, as liquidated damages to or for the benefit of the Lessor, subject to Lessee's privilege of curing said default as hereinafter provided. Any other type of security which may be offered by Lessee to satisfy the requirements of this Clause will be given reasonable consideration by the Secretary, but it is understood and agreed by the parties hereto that acceptance of bond in lieu of those described above shall be at the sole discretion of the Secretary.

It is understood and agreed that bond required by this provision will guarantee payment of rent only, and that corporate surety bond may be furnished annually or may be continued from year to year by a certificate of renewal, copy of which certificate shall be furnished the Secretary by Lessee. If United States Treasury Bonds are provided, Lessee agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to Lessee.

22. Performance Bond.

Before commencement of construction of each improvement on the leased premises, Lessee agrees to provide security which will guarantee completion of the improvement, and payment in full of claims of all persons for work performed in or materials furnished for construction. Lessee may provide said security by either:

A. Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Secretary and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon the faithful performance of Lessee, and give all claimants the right of action to recover upon said bond in any suit brought to foreclose mechanic's or materialmen's liens against the property;

B. Depositing in escrow with an institution acceptable to the Secretary, negotiable United States Treasury Bonds or cash, in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. The escrow instructions shall include provisions whereby the funds shall be disbursed in installments as construction progresses and on certificate of the Lessee's architect. The Lessor and Secretary shall be entitled to and have access to all information relative to the disbursement of funds through said escrow. The escrow instructions shall also provide that not less that 15 percent of such funds shall be withheld by the escrow holder until the period fixed by law for the filing of all mechanic's and materialmen's liens on such improvement shall have expired; if mechanic's or materialmen's liens are filed, the funds so withheld shall then be used to discharge such liens. If not such liens are filed, the withheld funds shall be then disbursed to the Lessee. If United States Treasury Bonds are

provided, Lessee agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to the Lessee;

C. Entering into a building loan agreement with a financial institution, which building loan agreement shall be subject to the approval of the Secretary. Prior to such approval, the Lessee shall perform all conditions precedent to the assumption of obligations under the agreement by the financial institution and Lessee shall deposit with the lending institution the difference between the amount of the loan and the total cost of improvement.

23. Companies Bonding and Insuring.

All corporate surety bonds provided by Lessee in compliance with this lease shall be furnished by companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal Bonds. Insurance policies shall be furnished by such responsible companies as are rated A plus-AAA or better in the current edition of Best's Insurance Guide.

24. Sublease, Assignment, Transfer.

The Lessee shall not, unless hereinafter expressly authorized, sublease, assign or transfer this lease or any right to or interest in this lease or any of the improvements on the leased premises without the written approval of the Lessor and the Secretary and sureties, and no such sublease, assignment or transfer shall be valid or binding without said approval, and then only upon the condition that sublessee, assignee or other successor in interest, excepting an approved encumbrancer under conditions herein set forth, shall agree in writing to be bound by each an all of the covenants and conditions of this lease. Should the Lessee attempt to make any such sublease, assignment or transfer, except as aforesaid, such action shall be deemed a breach of this lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Such approval of one sublease, assignment or transfer shall not validate a subsequent sublease, assignment or transfer, and the restrictions of the Clause shall apply to each successive sublease, assignment or transfer hereunder and shall be severally binding upon each and every sublessee, assignee, transferee and other successor in interest of the Lessee, excepting an encumbrancer under conditions herein set forth.

The Secretary shall not unreasonably withhold approval of any sublease, assignment or transfer, and shall either approve or state his reasons for disapproval within 30 days after the sublease, assignment or transfer is submitted to him for approval.

[First Supplemental Addition to Clause 24 for Office Space Subleases]

Prior to offering any office space for sublease, Lessee shall submit for approval of the Secretary schedules of minimum annual rents for said space. Said schedules shall be subject to periodic review at the request of the Secretary or the Lessee, and the minimum rents may be adjusted with the written consent and approval of said parties. The adjusted minimum rents shall be made effective by the Lessee at the earliest possible date following approval of the adjustment by the Secretary. In conjunction with the schedules of rent, Lessee shall also submit for approval of the Secretary a sublease form and an assignment of sublease form for use in

subleasing and assigning sublease of office space. Approval of the within described forms and schedules of rent by the Secretary shall constitute approval of all subleases of office space and assignments of such subleases entered into on the approved form under this lease. Such subleases shall provide for rents not less than the rents set forth in the applicable approved schedules. Copies of each sublease or assignment shall be furnished the Secretary. Each sublease shall provide that each sublessee shall be subject to and bound by each and all of the conditions of this lease, and no such subletting shall affect any of the obligations or liabilities of the Lessee hereunder. The term of subleases on the preapproved forms shall not exceed 5 years.

[Second Supplemental Addition to Clause 24 for Dwelling Unit Sublease]

Prior to offering dwelling unit sites for sublease, Lessee shall submit for approval of the Secretary schedules of minimum rents for said sites. Such schedules shall be subject to periodic review at the request of the Secretary of the Lessee, and rents for sites that have not been subleased may be adjusted with the written consent and approval of said parties. In conjunction with the schedules of rent, Lessee shall also submit for the approval of the Secretary a sublease form and an assignment of sublease form for use in subleasing and assigning subleases of sites. Such sublease form shall provide for periodic adjustment of rental rates under terms and conditions agreeable to the Secretary and the Lessee. Approval of the within described forms and schedules of rents by the Secretary shall constitute approval of all subleases of sites and assignments of subleases of sites entered into on the approved forms by Lessee under this lease. Such subleases shall provide for the payment of rents not less than the applicable rents set forth in the approved schedules. Copies of each sublease shall be furnished the Secretary. Each sublease shall provide that each sublessee shall be subject to and bound by each and all of the conditions of this lease, and no such subletting shall affect any of the obligations or liablilities of the Lessee hereunder.

[Third Supplemental Addition to Clause 24 for Housing Site Sublease]

Prior to offering dwelling units for occupancy, Lessee shall submit for approval of the Secretary schedules of minimum rents for said units. Such schedules shall be subject to periodic review at the request of the Secretary or the Lessee, and minimum rents for units may be adjusted with the written consent and approval of said parties. The adjusted minimum rents shall be made effective by the Lessee at the earliest possible date following approval of the adjustment by the Secretary. In conjunction with the schedules of rent, Lessee shall also submit for approval of the Secretary a sublease form for subtenancies having a term of one year or more; and such form shall provide for periodic adjustment of the rental rate under terms and conditions agreeable to the Secretary and the Lessee. Approval of the sublease form and schedules of rents by the Secretary shall constitute approval of all such subleases of units entered into on the approved form by Lessee under this lease. Such subleases shall provide for the payment of rents not less than the rents set forth in the applicable approved schedules. Copies of each sublease shall be furnished the Secretary. Subleases of dwelling units for periods of less than one year shall not require the approval of the Secretary. Each sublease shall provide that each sublessee shall be subject to and bound by each and all of the conditions of this lease, and no such subletting shall affect any of the obligations or liabilities of the Lessee hereunder.

25. Status of Subleases.

Termination of this lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies but shall operate as an assignment to Lessor of any and all such subleases and/or subtenancies.

26. Leasehold Encumbrance.

This lease, or any right to or interest in this lease or any of the improvements on the leased premises may be encumbered with the written approval of the Secretary. No such encumbrance shall be valid without said approval.

An encumbrance must be confined to the leasehold interest of Lessee or the subleasehold interest of a sublessee and shall not jeopardize in any way the Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analyses pertinent to the encumbrance that the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

In the event of default by the Lessee of the terms of an approved encumbrance, the encumbrancer may exercise any rights provided in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale of foreclosure, the encumbrancer shall give to the Secretary and Lessor notice of the same character and duration as is required to be given to Lessee by such encumbrance and/or the laws of the State of _____.

If any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may sell and assign the leasehold interest without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this lease. If the encumbrancer is the purchaser, it shall be required to perform this lease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purhcaser is a party other than the encumbrancer, said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this lease.

27. Lessor Paying Claims.

Lessor shall have the option to pay any lien or charge payable by Lessee under this lease, or settle any action therefor, if the Lessee after written notice from Lessor or Secretary fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee upon demand with interest at the rate of ____ percent per annum from date of payment until repaid. Default in such repayment shall constitute a breach of the covenants of this lease.

28. Inspection of the Premises.

The Secretary and the Lessor and their authorized representatives shall have the right, at any reasonable times during the term of this lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

29. Default.

Time is declared to be of the essence of this lease. Should Lessee default in any payment of monies or fail to post bond as required by the terms of this lease, and if such default shall continue uncured for the period of 30 days after written notice thereof by the Secretary to the Lessee, during which 30-day period Lessee shall have the privilege of curing such default, or should Lessee breach any other covenant of this lease, and if such breach shall continue uncured for a period of 60 days after written notice thereof by the Secretary to Lessee, during which 60-day period Lessee shall have the privilege of curing such breach, then Lessor and the Secretary may either:

A. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with any other provision of this lease; or

B. Reenter the premises and remove all persons and property therefrom, excluding the property belonging to authorized sublessees, and either:

(1) Relet the premises without terminating this lease, as the agent and for the account of Lessee, but without prejudice to the right to terminate the lease thereafter, and without invalidating any right of Lessor and the Secretary or any obligation of Lessee hereunder. Terms and conditions of such reletting shall be at the discretion of Lessor and the Secretary who shall have the right to alter and repair the premises as they deem advisable, and to relet with or without any equipment or fixtures situated thereon. Rents from any such reletting shall be applied first to the expense of reletting, collecting, altering and repairing, including attorneys' fees and any real estate commission actually paid, and thereafter toward the payment of all amounts due to Lessor and, if a sufficient sum is not thus realized to liquidate the total due, the Lessee shall pay to the Lessor monthly when due any deficiency, and the Lessor and the Secretary may sue thereafter as each monthly deficiency shall arise; or

(2) Terminate this lease at any time and even though the Lessor and the Secretary have exercised rights as outlined in (1) above. Exercise of this remedy shall exclude recourse to any other remedy.

Any adjudication rendered against Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this lease. In such event, the Lessor and the Secretary shall have the options set forth in sub-clauses (1) and (2) herein and, furthermore, the Lessor is hereby declared to be a first preferred creditor.

No waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

At least 45 days prior to any termination of the lease, the Lessor shall give to the encumbrancer written notice of his intention to so

terminate. If such proposed termination be for any default of Lessee under the lease, the encumbrancer shall be entitled to remedy such default at any time before such termination occurs, and thereby prevent termination for such default, or if such default cannot be remedied within 45 days, to commence the remedy thereof within 30 days and diligently prosecute the same thereafter, during which time the lease shall not be terminated for such default, nor if fully rectified shall it thereafter be terminated for such default.

30. Holding Over.

Holding over by the Lessee after the termination of this lease shall not constitute a renewal or extension thereof or give the Lessee any right hereunder or in or to the leased premises.

Lessee agrees to remove all property removable under the terms of this lease within 60 days after termination of this lease or pay a daily rental computed at the rate of double the daily rental charged during the year immediately preceeding termination of this lease from the day following the termination date of the lease until said property is removed.

31. Attorneys' Fees.

If action be brought by either party in unlawful detainer for rent or any other sums of money due under this lease, or to enforce performance of any of the covenants and conditions of this lease, the losing party shall pay reasonable attorneys' fees of the prevailing party to be fixed by the Court as a part of the costs in any such action.

32. No Partnership; Operation of Businesses.

Regardless of the fact that terms of rental are in part on a percentage basis, Lessee and Lessor are not in partnership.

All businesses on the leased premises shall be conducted during the regular and customary hours of such businesses and on all business days in good faith so that Lessor will at all times receive the maximum income under the percentage rental provisions of this lease.

33. Lessee's Obligations.

While the leased premises are in trust or restricted status, all of the Lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

34. Payments and Notices.

All notices, payments and demands shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by registered mail. Service of any notice or demand shall be deemed complete 10 days after mailing or on the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the Secretary in care of the Office of the Bureau of Indian Affairs hereinabove recited.

35. Eminent Domain.

If, at any time during the term of this lease, the leased premises or any part thereof is taken or condemned under the laws of Eminent Domain, then and in every such case the leasehold estate and interest of the Lessee in such premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of the taking of leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and the Lessor as their interests appear at the time of such taking. The rental thereafter payable hereunder for the remainder of the term of this lease shall be reduced in the proportion that the value of the entire premises is reduced by such taking or condemnation. In the event of condemnation of the leased premises or any part thereof, the compensation or award insofar only as it is awarded for damages to the improvements on the leased property to the extent of the unpaid balance of any approved encumbrance shall be paid to the encumbrancer. As betweeen Lessor and Lessee, such amount shall be deemed paid to Lessee and, if such amount exceeds the amount to which Lessee is entitled under the other terms of this lease, Lessee shall pay such excess to Lessor.

36. Lease Binding.

This lease and the covenants, conditions and restriction hereof shall extend to and be binding upon the successors, heirs, assigns, executors and administrators of the parties hereto.

37. Interest of Member of Congress.

No Member of, or Delegate to, Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

38. Validity.

This lease, and any modification of or amendment to this lease, shall not be valid or binding upon either party hereto until approved by the Secretary.

39. Lessor's Determinations, Consents or Approvals.

Whenever in this lease it is provided that the Lessor may exercise any rights or discretions or make any determinations, consents or approvals, and the leased land is in multiple ownership, the action of those Lessors holding the majority of interest in the ownership of the leased premises shall constitute the action of all the Lessors for the purposes of this lease and any extension thereof. However, this provision shall not apply while any of the land described in this lease is held in trust by the United States of America unless and until regulations are amended to permit said action to apply to Indian trust land.

40. Termination of Federal Trust.

Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by issuance of a fee patent or otherwise during the term of the lease. However, such termination shall not serve to abrogate the lease. The owners of the land and the Lessee and his surety orsureties shall be notified of any such change in the status of the land.

41. Arbitration.

Whenever during the term of this lease the Lessee, the Lessor and the Secretary are unable to reach an agreement as required by this lease and it becomes necessary to submit a matter to arbitration for settlement, an Arbitration Board shall be established. Said Arbitration Board shall consist of three persons, one member to be selected by the Lessee, one member to be selected by the Lessor, and the third to be selected by the other two members. The costs of such Arbitration Board shall be shared equally by the Lessee and the Lessor. It is further understood and agreed that the Secretary may be expected to accept any reasonable decisions reached by said Arbitration Board, but he cannot be legally bound by any decision which might be in conflict with the interest of the Indians or the United States Government.

42. Agreements for Utility Lines and Streets.

Lessee shall have the right to enter into agreements with public utility companies and the State of _____ or any of its political subdivisions to provide utility services, including gas, water, electricity, telephone, television and sewer, and to dedicate street rights-of-way necessary to the full enjoyment of the leased premises and the development thereof in accordance with the provisions of this lease, providing no such agreement or dedication shall cover land not included in this lease, and further provided that such an agreement or dedication shall not be for a period of time longer than the term of this lease. Upon entering into such an agreement or dedication, the Lessee shall furnish to the Secretary executed copies thereof, together with a plat or diagram showing the true location of the utility lines or streets to be constructed in accordance therewith.

43. Tax Immunity.

Nothing contained in this lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest thereon.

44. Force Majeure.

Whenever under this instrument a time is stated within which or by which original construction, repairs or reconstruction of said improvements shall be completed, and if during such period a general or sympathetic strike or lockout, war or rebellion or some other event occurs beyond Lessee's power to control, the period of delay so caused shall be added to the period allowed herein for the completion of such work.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands.

DATED:

_____
(Name)
LESSOR

DATED:

_____
(Name)
LESSEE

45. Affidavit of Lessee.

STATE OF _____)
) ss
COUNTY OF _____)

I, _____, (_____) of _____ and _____, (_____) of _____, Lessee herein, being duly sworn, depose and say that _____ leasing the land herein for _____ own use and benefit and not directly or indirectly for the benefit of any other person or corporation.

_____
Signature of Lessee

_____
Signature of Lessee

Subscribed and sworn to before me this ____ day of _____, 19___.

_____
Notary Public in and for said
County and State

46. Corporate Acknowledgement.

STATE OF _____)
) ss
COUNTY OF _____)

On _____, 19___, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____ the _____ and _____, respectively of the corporation named as Lessee in the foregoing lease and acknowledged to me that they executed said lease on behalf of said corporation as authorized by a duly adopted resolution of the Board of Directors.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:
_____, 19____.

47. Affidavit of Lessor.

STATE OF _____)
) ss
COUNTY OF _____)

I, the undersigned, _____
_____
_____, Lessor(s) of the within lease, hereby certify that the contents, purport, and effect of the within the lease are fully understood by _____, and that _____ signed the lease of _____ own free will.

_____
Signature of Lessor

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Notary Public in and for said
County and State

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

The within lease, consisting of pages _____ through page _____, is hereby approved.

_____
(Name)

_____
(Title)

Date:_____

Answers -- Session One
Background, Authorities and Fundamentals

A. True - False

T F 1. Leasing of lands is a relatively recent historical event, dating back no further than the early days of English civilization.

T F 2. Provisions for leasing of Indian lands as contained in treaties were affirmative and encouraged, rather than discouraged, such activities.

T F 3. One of the anticipated outcomes of leasing of Indian lands was that Congressional subsidies for Indians would be decreased.

T F 4. A lease is a contract which conveys exclusive rights to use real estate for an indefinite period of time.

T F 5. Developers are interested in leasing lands because lower front end costs associated with leasing (as opposed to purchasing) conserve cash for development expenses and working capital.

B. Completion.

1. The legal description of the property covered by the lease is known as the recital and can be described in a number of ways such as section, range, and township; metes and bounds; and by reference to a street address (if the property is urban).

2. The habendum and tenendum are parts of the lease that spell out its term and duration and should specify the commencement date, the length of the term, and the ending date.

3. The mandatory clauses required by statute and regulation in Indian leases are contained in that part of the lease known as conditions, covenants, and warranties.

4. Transfer or conveyance of a valid, existing lease to a third party who becomes the new lessee is called an assignment.

5. An agreement changing a provision(s) of the lease which is made during the term of the lease is known as a modification, an amendment, or a supplemental agreement.

6. The interest conveyed by the lessor to the lessee under the lease, primarily that of quiet enjoyment, is known as the leasehold interest.

Answers - Session One (cont'd)

B. Completion (cont'd)

7. An agreement granting a leasehold interest in the lessee's leasehold to a third party is called a sublease.

8. To be valid, a lease of Indian lands must, almost without exception, be approved by the Secretary of the Interior or his duly authorized representative, acting under delegated authority.

9. The Federal Government's authority to deal with Indian tribes to obtain interests in their land is found in Article I, Section 8, Clause 3, popularly known as the "Commerce Clause."

10. Rental adjustment clauses, which may be considered as a protective measure of Indian landowner interests, should be considered for all leases, even those with short terms. When they appear in a lease, they are found in the reddendum part of the lease.

C. Matching (Some answers may be used more than once; others not at all)

1. G Act which provides 99 year leasing authority for certain tribes.

2. C Act which permits Superintendent to award leases when heirs cannot agree on a lease.

3. H Act which permits leasing of individually-owned and tribal lands for 25 years for growing of specialized crops.

4. I Act which initially provided for 3 year leases of Indian lands for farming and grazing.

5. H Act which provides for 25 year lease term for business leases and for one renewal term of a like number of years.

6. C Act which provides for leasing of individually-owned land when heirs have not been determined.

7. E Act which permits 10 year leases of arid, but irrigable, individually-owned lands.

A. July 3, 1926

B. May 31, 1900

C. July 8, 1940

D. General Allotment Act of 1887

E. May 18, 1916

F. Feb. 11, 1936

G. Sept. 21, 1959

H. August 9, 1955

I. Feb. 28, 1891

Answers - Session One (cont'd)

C. Matching (cont'd)

8. A Act which provides for 10 year lease term of unallotted, irrigable lands.

9. D Act which sought to break up reservations by granting allotments to tribal members.

A. July 3, 1926

B. May 31, 1900

C. July 8, 1940

D. General Allotment Act of 1887

E. May 18, 1916

F. Feb. 11, 1936

G. Sept. 21, 1959

H. August 9, 1955

I. Feb. 28, 1891

Answers - Session Two
Surface Leasing Regulations

True/False

T F 1. Regulations are a form of administrative law which are secondary to, but equally as enforceable as, statutory law.

T F 2. Authority to waive regulations set forth in 25 CFR 162 is delegated to the Area Directors.

T F 3. All leases must be in the form approved by the Secretary of the Interior.

T F 4. A lessee must, when in violation of the terms of his lease, be provided with a written notice of such violation and given 20 days in which to show cause why the lease shouldn't be cancelled.

T F 5. Improvements placed on the land generally become the property of the landowner after lease expiration, unless provisions to the contrary are provided in the lease.

Completion

1. Leasing regulations are binding on lessees of Indian lands, Indian landowners, and on officials and employees of the Department of the Interior.

2. Individually-owned land means both trust and restricted land beneficially owned by Indian individuals.

3. Government land is land under the jurisdiction of the BIA, title to which is vested in the U.S., and which is neither tribal nor individually-owned.

4. A revocable privilege to use land is known as a permit.

5. Most leases of Indian trust lands must be for the fair market value; exceptions include leasing for certain religious or public purposes or to a member of the lessee's own family.

6. Tribes may lease their land for less than fair market value for subsidizing a tribal enterprise or for certain homesite purposes.

7. Surety bonds may be required to protect the lessor's interest by requiring the bond to cover (1) one year's rent, (2) the cost of any improvements to be placed on the land, or (3) for other lease obligations.

8. The maximum term for which a lease may be granted is specified by law and depends on purpose, location, and other specified factors.

9. Leases, excepting those based on a percentage of income produced by the land, must provide for a periodic review of equities involved, at not less than five year intervals.

10. Generally any sublease, assignment, amendments or encumbrance of a lease may only be made with Secretarial approval and the written consent of all lessors, lessees or sureties.

Answers - Session Three
Agricultural Leases

True/False

T F 1. The majority of agricultural leases are for terms of ten or fewer years.

T F 2. The Secretary of the Interior can require the lessee to post a bond, which is for the purpose of guaranteeing compliance with the terms of the lease.

T F 3. Excessive bonding requirements can be detrimental to the interests of the Indian landowner.

T F 4. Indian landowners have the right in all cases to negotiate leases on their lands.

T F 5. "Step rate" rentals are the exception, not the rule, in agricultural development leases.

Completion

1. The "grace" period in which delinquent rents can be paid without penalty is 10 days; when the "grace" period has passed without payment, interest in the amount of 10 % is assessed.

2. Bonding requirements can be met in a number of ways; among these are U.S. Treasury bonds, time certificates of deposit, and cash. The use of personal surety bonds should be avoided.

3. The maximum term for dry farm and farm pasture leases on developed land is five years; however, every effort should be made to limit dry farm leases to shorter terms, unless special considerations (such as crop rotations) are involved.

4. The ideal crop share lease contains a minimum rent in addition to the percentage of the crop payment to the lessor.

5. Conservation and land use requirements are developed by the Branch of Land Operations and these requirements should be made known to the Appraisal staff so that their impact on market value can be determined.

6. Irrigated lands can be leased for a 10 year term; the operations and maintenance changes assessed on these leases, whether in or out of production, constitute a lien against the land if not paid.

7. Withholding of water delivery is the best way to guarantee payment of operation and maintenance charges.

8. Agricultural development leases can be for a term of 25 years; two criteria to use when evaluating a proposed development lease are the substantially of investment and whether the crops are "specialized" crops.

9. Agricultural development leases with terms in excess of ten years should protect the lessor's interests by requiring a rental reappraisal or a cost of living adjustment.

10. Compliance by lessees with the terms of the leases is important, and each realty office should have a follow-up suspense system to monitor compliance; minimum essentials of such a system include billing lessees for rent, reviewing bonding and insurance requirements, performing field checks for compliance, timely requesting of appraisals, farm plans and stipulations and notifying land owners in advance of expiring leases.

Answers - Session Four
Business Leases

True/False

T F 1. Authority to approve business leases has been delegated to the Area Directors.

T F 2. Business leases may be authorized for an initial term of 50 years and may contain a renewal clause of 49 years.

T F 3. Long term leases should only be granted for development purposes constituting the highest and best use of the land; it does not have to consider the established uses of adjoining lands.

T F 4. A good type of development lease is one where the lessee subleases the undeveloped land and allows the sublessee to develop the property.

T F 5. Subleases of commercial facilities need not be subject to Secretarial approval but must be approved by the lessor.

Completion

1. Generally speaking, short term business leases are for 10 or fewer years; these do not usually require substantial development of the leased premises.

2. The term of a commercial development lease will be influenced by a number of factors, chief among which are (1) the nature and extent of any improvements to be made, (2) competition from similar properties in the area, and the financing used by the lessee in developing the premises.

3. Commercial development leases should require an advance minimum rental based on the fair market value of the property.

4. Rentals based on a percentage of income are, unfortunately, susceptible to fraud on the part of the lessee.

5. If development is not completed according to schedules set forth in the lease, penalties of increased rents and loss of undeveloped areas from the leases premises should be included.

6. Terms for residential development leases usually have a 50 year minimum and may go up to 99 years, but most fall in the 60 to 75 year range.

7. As a general rule, land in excess of what can be developed in 8 years should not be included in the lease.

Answers - Session Five
Drafting Development Leases

True/False

T F 1. When a lessee obtains a twenty-five year lease with one option to renew for another twenty-five year term, it is not unusual for him to exercise the option as soon as the lease is approved, thereby giving him a 50 year lease.

T F 2. Percentage rental income accruing to the lessor under a development lease should be based on net, not gross, income.

T F 3. When a lessee wishes to utilize the leased premises for a use other than that specified in the lease, he will have to negotiate an amendment to the lease.

T F 4. No sublease, assignment, or transfer of a lease is to be made without the approval of the Secretary of his authorized representative.

T F 5. A leasehold may be encumbered for almost any purpose.

Completion

1. The decision of an arbitration obard cannot legally bind the Secretary as any decision he might make is subject to administrative appeal. Therefore, inclusion of an arbitration clause in a development lease is not recommended.

2. The date the lease is "made and entered into" is the date the first party signs the lease.

3. When the lessee is other than an individual, copies of organization documents (such as articles of incorporation, evidence of authority to act, etc.) should be required of the lessee.

4. The type of rental clause that should be used in a developmental lease for a single business site, such as a gasoline station, would guarantee a minimum annual rental against a percentage of gross receipts.

5. When a development lease rental is not based primarily on a percentage of the income produced by the land, the lease must provide for periodic reviews of the equities involved.

6. In adjusting rental rates, both cost-of-living increases and reappraisals are used. The former tends to protect the purchasing power of the agreed upon rental, but does not bear a

relationship to the particular land covered by the lease as will a reappraisal.

7. The lessee of a development lease should bear the applicable taxes and utility charges as well as keeping the leased premises free of liens; when the lessor has no responsibility for such payments, he is said to have a net lease.

8. Penalties for lessee's failure to complete development in a timely manner should be included in a development lease since the lease may not be canceled after improvements have begun.

9. In case of default by a lessee, a 10 day show cause notice is required to be served upon him by the provisions of 25 CFR 162.14.

10. The provision in a development lease which temporarily excuses lessee performance in case of acts of God (war, riots, floods, etc.) is known as force majeure.

☆U.S. GOVERNMENT PRINTING OFFICE:1986-619-934-40407

U. S. DEPARTMENT OF THE INTERIOR
March 3, 1849